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U.S. HOUSE OF REPRESENTATIVES

OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES

1989 EDITION

SEPTEMBER 18, 1989

Prepared for the use of the Committee on Ways and Means by its staff

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LETTER OF TRANSMITTAL

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 18, 1989.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In 1987, the Committee published a staff document entitled "Overview and Compilation of U.S. Trade Statutes" for the use of Committee members and interested parties in the international trading community. This document was unique in that it contained not only a summary of the various statutory provisions relating to foreign trade, but also an updated text of these laws which integrates numerous separate acts of Congress into a single statutory compilation. This document has proved to be extremely useful to Members of Congress, Congressional staff, Government officials, and the general public.

Because of the major overhaul of our trade laws embodied in the Omnibus Trade and Competitiveness Act of 1988, as well as enactment of the U.S.-Canada Free Trade Agreement Implementation Act, the staff has now prepared an updated version of this document which is current through the end of the 100th Congress.

As was the case with the original version, the statutory authorities selected are the major provisions of Federal law which are directly related to the conduct of U.S. international trade. The compilation is not meant to be a comprehensive treatise of every trade-related law or program, nor does it cover provisions to regulate domestic commerce. The laws and programs which are within the jurisdiction of the Committee on Ways and Means are the main focus of this document and are discussed in greater detail. In addition, some of the laws and programs described may be within the jurisdiction of other committees of the House. These provisions are included in order to provide a complete survey of the principal trade authorities.

The document has been prepared by the Committee's trade staff with assistance from the Congressional Research Service and various Government agencies.

Any suggestions on how to improve this document as a reference tool in subsequent versions of this publication are always welcome.

Sincerely yours,

ROBERT J. LEONARD,
Chief Counsel.

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PREFACE

The role of Congress in formulating international economic policy and regulating international trade is based on a specific Constitutional grant of power. Article I of the U.S. Constitution sets forth the various powers and responsibilities of the legislature. Article I, section 8 lists certain specific express powers of the Congress. Among these express powers are the powers:

> "to lay and collect taxes, duties, imposts and excises . . . [and] to regulate commerce with foreign nations, and among the several states. . . ."

The Congress therefore is the fundamental authority responsible for Federal Government regulation of international transactions. Within the House of Representatives, jurisdiction over trade legislation lies in the Committee on Ways and Means, based on its jurisdiction over taxes, tariffs, and trade agreements. Throughout the history of U.S. trade law and policy, the Committee on Ways and Means has been at the forefront of its development. The Committee's jurisdiction ranges from regulation of tariff affairs, to regulation of nontariff trade barriers such as quotas and standards, regulation of unfair trade practices such as dumping, subsidization, or counterfeiting, provision of temporary relief from import competition and adjustment assistance, providing for bilateral and multilateral trade agreements with foreign trading partners, and responsibility for authorizing and overseeing the departments and agencies charged with implementation of the trade laws and programs.

The difficulties of retaining and exercising full control over international trade matters within the legislative branch were recognized by Congress shortly after enactment of the Smoot-Hawley Tariff Act of 1930. In 1934, the Congress enacted the Reciprocal Trade Agreements Act which delegated to the President authority to negotiate international trade agreements for the reduction of tariffs. This Act, which marked the beginning of the trade agreements program for the United States, represented the first significant delegation of authority from Congress to the President with respect to international trade policy.

Since 1934, the delegation of authority from Congress to the President has varied in scope and degree, reflecting congressional concern over maintaining careful control of international trade policy. When the trade agreements negotiating authority granted to the President expired in 1967, for example, it was not renewed again until 1974. In the Trade Act of 1974, Presidential negotiating authority was substantially revised, extended to nontariff as well as tariff negotiations, and made subject to specific consultation and notification requirements both prior to and during the course of negotiation. The Omnibus Trade and Competitiveness Act of 1988, in addition to providing negotiating authority and explicit negotiating objectives for the Uruguay Round, expands the consultation requirements between USTR and the Congress and requires the formulation of an annual trade policy agenda.

Due to the central role of Congress in formulating international economic policy, an understanding of U.S. international trade law and policy must begin with the statutory authorities and programs which provide the foundation for our trade policy. This document provides two essential tools for those interested in obtaining a better understanding of U.S. trade law and policy. Part I contains a general overview of current provisions of our trade laws. This overview was prepared by the staff of the Subcommittee on Trade and provides a thorough yet understandable explanation of how these laws operate. Part II contains a compilation of the actual text of these laws, as amended. This updated statutory compilation incorporates all major provisions of U.S. trade law and includes all amendments to these laws as of the beginning of the 101st Congress. While this integrated text should not be treated as a substitute for official public laws or the United States Code, it is an accurate and highly useful document which integrates numerous separate Acts of Congress into one text. We hope this document will prove useful to official policymakers as well as the interested public.

PART I: OVERVIEW

Chapter 1: TARIFF AND CUSTOMS LAWS

Harmonized Tariff Schedule of the United States

Historical background

The Harmonized Tariff Schedule of the United States (HTS) was enacted as subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 [1] and became effective on January 1, 1989. The HTS replaced the Tariff Schedules of the United States (TSUS), enacted as section 1202 of the Tariff Act of 1930 (19 U.S.C. 1202) by the Tariff Classification Act of 1962; [2] the TSUS had been in effect since August 31, 1963.

The HTS is based upon the internationally adopted Harmonized Commodity Description and Coding System (known as the Harmonized System or HS) of the Customs Cooperation Council. Incorporated into a multilateral convention effective as of January 1, 1988, the HS was derived from the earlier Customs Cooperation Council Nomenclature, which in turn was a new version of the older Brussels Tariff Nomenclature. The HS is an up-to-date, detailed nomenclature structure intended to be utilized by contracting parties as the basis for their tariff, statistical and transport documentation programs.

The United States did not adopt either of the two previous nomenclatures but, because it was a party to the convention creating the Council and because of the potential benefits from using a modern, widely adopted nomenclature, became involved in the technical work to develop the HS. Section 608(c) of the Trade Act of 1974 [3] directed the United States International Trade Commission (USITC) to investigate the principles and concepts which should underlie such an international nomenclature and to participate fully in the Council's technical work on the HS. The USITC, the U.S. Customs Service (which represents the United States at the Council), and other agencies were involved in this work through the mid- and late-1970's; in 1981, the President requested that the USITC prepare a draft conversion of the U.S. tariff into the nomenclature format of the HS, even as the international efforts to complete the nomenclature continued. The Commission's report and converted tariff were issued in June, 1983. After considerable review and the receipt of comments from interested parties, legislation to repeal the TSUS and replace it with the HTS was introduced. Following the August 23, 1988 enactment of the omnibus trade measure, the United States became a party to the HS Convention, joining over 50 other major trading partners. The new HTS became effective by Presidential proclamation as of January 1, 1989.[4]

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[1] Public Law 100-418, Aug. 23, 1988.

[2] Public Law 87-456, approved May 24, 1962.

[3] Public Law 93-618, Jan. 3, 1975.

Structure of the schedule

Under the HS Convention, the contracting parties are obliged to base their import and export schedules on the HS nomenclature, but the rates of duty are set by each contracting party. The HS is organized into 21 sections and 96 chapters, with accompanying general interpretive rules and section and chapter notes. Goods in trade appear in the system, in general, in categories beginning with crude and natural products and continuing in further degrees of complexity through advanced manufactured goods. These product headings are designated, at the broadest coverage level, with 4-digit numerical codes and are further subdivided into narrower categories assigned 2 additional digits. The contracting parties must employ all 4- and 6-digit provisions and all rules and notes without deviation; they may also adopt still narrower subcategories and additional notes for national purposes, and they determine all rates of duty. Thus, a common product description and numbering system to the 6-digit level of detail exists for all contracting parties, facilitating international trade in goods. Two final chapters, 98 and 99, are reserved for national use (chapter 77 is reserved for future use).

The HTS therefore sets forth all the international nomenclature at the 6-digit level and, where needed, contains added subdivisions assigned 2 more digits, for a total of 8 at the tariff rate line (legal) level. Two final digits are assigned as statistical reporting numbers where further statistical detail is needed, along with "check digits" for computerized verification of reporting accuracy (for a total of 11 digits to be listed on entry documents). Chapter 98 comprises special classification provisions (former TSUS schedule 8), and chapter 99 (former appendix to the TSUS) contains temporary modifications pursuant to legislation or presidential action.

Each section's chapters contain numerous 4-digit headings (which may, when followed by zeroes, serve as U.S duty rate lines) and 6- and 8-digit subheadings. Additional U.S. notes may appear after HS notes in a chapter or section, and most of the general headnotes of the former TSUS appear as general notes to the HTS set forth before chapter 1. These notes provide definitions or information on the scope of the pertinent provisions or set additional requirements for classification purposes. In addition, the HTS contains a table of contents, an index, footnotes, and other administrative material, all of which is provided for ease of reference and, along with the statistical reporting provisions, have no legal significance or effect.

The HTS is not published as a part of the statutes and regulations of the United States but is instead subsumed in a document produced and updated regularly by the USITC entitled Harmonized

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[4] Pres. Proc. 5911, Nov. 19, 1988.

Tariff Schedule of the United States: Annotated for Statistical Reporting Purposes. Changes in the Schedule became so frequent and voluminous that its inclusion in title 19 of the United States Code effectively ceased with the 1979 supplement to the 1976 edition. The Commission is charged by section 1207 of the 1988 Omnibus Trade and Competitiveness Act (19 U.S.C. 3007) with the responsibility of compiling and publishing, "at appropriate intervals," and keeping up to date the HTS and any related materials. This document, initially appearing as USITC Publication 2030, includes both the current legal text of the HTS and all statistical provisions adopted under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)). It is presented as a looseleaf publication so that pages being modified in supplements to the schedule's basic edition may be inserted as replacements. Several supplements may appear between the publication of each basic edition.

Unlike the TSUS, which applied exclusely to imported goods, the HTS can for almost all goods be used to document both imports and exports; the small number of exceptions enumerated before chapter 1 require particular exports to be reported under Schedule B provisions. That Schedule, which prior to 1989 served as the means of reporting all exports, has been converted to the HS nomenclature structure. However, for certain goods having significance in terms of exports, variations in the desired product description and detail compel the use of provisions that cannot be accommodated in the tariff under the international nomenclature structure.

The HTS, like its predecessor the TSUS, is presented in a tabular format containing 7 columns, each with a particular type of information. A sample page of the HTS is set forth below:

Heading/ Subheading	Stat. Suf. & cd		Article Description	Units of Quantity	Rates of Duty		
					1		2
					General	Special	
7213 (con.)			Bars and rods, hot-rolled, in irregularly wound coils, of iron or nonalloy steel (con.):				
			Other, containing by weight 0.25 percent or more but less than 0.6 percent of carbon:				
7213.41			Of circular cross section measuring less than 14 mm in diameter:				
7213.41.30	00	3	Not tempered, not treated and not partly manufactured................	kg......	1.9%	Free (E,IL) 1.7% (CA)	5.5%
7213.41.60	00	6	Other............................	kg......	2.3%	Free (E,IL) 2% (CA)	6%
7213.49.00			Other..................................	....	1.9%	Free (E,IL) 1.7% (CA)	5.5%
			Of circular cross section:				
	30	5	With a diameter of 14 mm or more but less than 19 mm.......	kg			
	60	8	With a diameter of 19 mm or more..........................	kg			
	90	2	Other............................	kg			
7213.50.00			Other, containing by weight 0.6 percent or more of carbon................................	....	1.9%	Free (E,IL) 1.7% (CA)	5.5%
			Of circular cross section:				
	20	3	With a diameter of less than 14 mm..	kg			
	40	9	With a diameter of 14 mm or more but less than 19 mm................	kg			
	60	4	With a diameter of 19 mm or more....	kg			
	80	0	Other..................................	kg			
7214			Other bars and rods of iron or nonalloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling:				
7214.10.00	00	5	Forged.....................................	kg......	4.7%	Free (E,IL) 4.2% (CA)	20%
7214.20.00	00	3	Concrete reinforcing bars and rods...........	kg......	4.9%	Free (E,IL) 4.4% (CA)	20%
7214.30.00	00	1	Of free-cutting steel........................	kg......	4.7%	Free (E,IL) 4.2% (CA)	20%
7214.40.00			Other, containing by weight less than 0.25 percent of carbon............................	....	4.7%	Free (E,IL) 4.2% (CA)	20%
	10	7	Flats..................................	kg			
	30	3	Rounds.................................	kg			
	50	8	Other..................................	kg			
7214.50.00			Other, containing by weight 0.25 percent or more but less than 0.6 percent of carbon......	....	4.7%	Free (E,IL) 4.2% (CA)	20%
	10	4	Flats..................................	kg			
	30	0	Rounds.................................	kg			
	50	5	Other..................................	kg			
7214.60.00			Other, containing by weight 0.6 percent or or more of carbon............................	....	4.7%	Free (E,IL) 4.2% (CA)	20%
	10	2	Flats..................................	kg			
	30	8	Rounds.................................	kg			
	50	3	Other..................................	kg			

The first column, entitled "Heading/Subheading", sets forth the 4-, 6-, or 8-digit number assigned to the class of goods described to its right. It should be recalled that the latter is the only numerical code at the legal level which is determined by the United States, since the 4- and 6-digit designators are part of the international convention.

The second column is labelled "Stat. Suf. & cd", meaning statistical suffix and check digit. Wherever a tariff rate line is annotated to permit collection of trade data on narrower classes of merchandise, the provisions adopted administratively by an interagency committee under section 484(e) of the 1930 Act (19 U.S.C. 1484(e)) are given 2 more digits which must be included on the entry documents presented to Customs officials. Where no annotations exist, 2 additional zeroes are added to the 8-digit legal code applicable to the goods in question. The goods falling in all of the 10-digit statistical reporting numbers of a particular 8-digit legal provision receive the same duty treatment. The last digit, the check digit, is reported to permit computers examining an entry document or export declaration to ascertain if the particular subheading number exists or was erroneously copied.

The third column, "Article Description", contains a detailed description of the goods falling within each heading and statistical reporting number.

In the fourth column, "Units of Quantity", the unit of measure in which the goods in question are to be reported for statistical purposes is set forth. These units are administratively determined under section 484(e) of the Tariff Act of 1930. In many instances, the unit of quantity is also the basis for the assessment of the duty. For many categories of products, two or three different figures in different units must be reported (e.g., for some textiles, weight and square meters; for some apparel, the number of garments, value, and weight), with the second unit of quantity frequently being the basis for administering a measure regulating imports, such as a quota. Where an "X" appears in this column, only the value of the shipment must be reported.

The last three columns appear under the common heading "Rates of Duty" and are entitled "General", "Special", and "2", respectively. These columns contain all of the various rates of duty that apply to the goods of the pertinent provision, depending on the source of the goods and other criteria. Their application to goods originating in particular countries is discussed below under the heading "Applicable duty treatment."

A rate of duty generally has one of three forms: ad valorem, specific or compound. An ad valorem rate of duty is expressed in terms of a percentage to be assessed upon the transaction value of the goods in question. A specific rate is expressed in terms of a stated amount payable on some quantity of the imported goods, such as 17 cents per pound. Compound duty rates combine both ad valorem and specific components (such as 5% ad valorem plus 17 cents per pound).

Chapter 98 comprises special classification provisions permitting, in specified circumstances, duty-free entry or partial duty-free entry of goods which would otherwise be subject to duty. The article descriptions set forth in the headings of this chapter enunciate the circumstances in which goods are eligible for this duty treatment. Thus, articles reimported after having been exported from the United States; goods subject to personal exemptions (such as those for returning U.S. residents); government importations; goods for religious, educational, scientific, or other qualifying institutions; samples; and articles admitted under bond are some of the goods eligible for such duty treatment.

Chapter 99 contains provisions, generally temporary in nature, that modify or otherwise affect the duty treatment of specified articles in the other chapters. Additional duties and suspensions or reductions of duties enacted by Congress are included, as are temporary modifications (increases or decreases in duty rates) and import restrictions (quotas, import fees, and so forth) proclaimed by the President under trade agreements or pursuant to legislation. However, antidumping and countervailing duties imposed under the authority of the Tariff Act of 1930, as amended, to eliminate the unfair price advantage of underpriced or subsidized imports are not included. These duties are listed in the Federal Register.

Applicable duty treatment

Column 1—General.—The rates of duty appearing in the column 1—general of the HTS are imposed on products of countries that have been extended most-favored-nation (MFN) or non-discriminatory trade treatment by the United States, unless such imports are eligible for treatment under a preferential tariff scheme discussed below. The column 1—general duty rates are concessional and have been set through reductions of full statutory rates in negotiations with other countries.

Column 1—Special.—General note 3 to the HTS sets forth the special tariff treatment afforded to covered products of designated countries or under specified measures. These programs and the corresponding symbols by which they are indicated in the special subcolumn along with the appropriate rates of duty are as follows:

Generalized System of Preferences [GSP]	A or A*
Automotive Products Trade Act [APTA]	B
Agreement on Trade in Civil Aircraft [ATCA]	C
United States-Canada Free-Trade Agreement	CA
Caribbean Basin Economic Recovery Act [CBERA]	E or E*
United States-Israel Free Trade Area	IL

The presence of one or more of these symbols indicates eligibility of the described articles under the respective program. In the case of the GSP, a symbol followed by an asterisk indicates that, although the described articles are geneally eligible for duty-free entry, such tariff treatment does not apply to products of the designated beneficiary countries specified in general note 3(c). In the case of CBERA, the asterisk indicates that some of the described articles, as provided in the *Federal Register* or the *Code of Federal Regulations,* are ineligible for duty-free entry. These programs are discussed in greater detail below.

Column 2.—The column 2 rates of duty apply to products of countries that have been denied MFN status by the United States (see general note 3(b)); these rates are the full statutory rates, generally as enacted by the highly restrictive Tariff Act of 1930. The products of the following countries are currently subject to column 2 rates of duty:

Afghanistan
Albania
Bulgaria
Cuba
Czechoslovakia
Estonia
German Democratic Republic
Kampuchea
Laos
Latvia
Lithuania
Mongolia
North Korea
Romania
Union of Soviet Socialist Republics
Vietnam

Special duty exemptions and preferences

This section will briefly discuss HTS subheadings 9801.00.10, 9802.00.40, 9802.00.60, 9802.00.80, providing duty treatment for various categories of American goods returned from abroad after processing or assembly; general note 3(a)(iv), providing preferential tariff treatment for products of U.S. insular possessions; and duty exemptions under APTA and ATCA, as mentioned above.

American goods returned (HTS subheading 9801.00.10).—American goods may be returned to the United States duty-free under HTS subheading 9801.00.10 if they are not advanced in value or improved in condition while abroad. The courts have interpreted this provision to allow duty-free entry of American goods which had been exported for sorting, separating (e.g., by grade, color, size, etc.), culling out, and discarding defective items and repackaging in certain containers, so long as the article itself has not been the object of advancement in value or improvement in condition while abroad.

American goods repaired or altered abroad (HTS subheading 9802.00.40).—HTS subheading 9802.00.40 provides that goods exported from the United States for repairs or alterations abroad are subject to duty upon their reimportation into the United States (at the duty rate applicable to the imported article) only upon the value of such repairs or alterations. The provision applies to processing such as restoration, renovation, adjustment, cleaning, correction or manufacturing defects, or similar treatment that changes the condition of the exported article but does not change its essential character. The value of the repairs or processing for purposes of assessing duties is generally determined, in accordance with U.S. note 3 to subchapter II of chapter 98, by—

(1) the cost of the repairs or alterations to the importer, or

(2) if no charge is made, the value of the repairs or alterations, as set out in the entry documents.

However, if the customs officer finds that the amount shown in the entry document is not reasonable, the value of the repairs or alterations will be determined in accordance with the valuation standards set out in section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a).[5]

American metal articles processed abroad (Subheading 9802.00.60).—HTS subheading 9802.00.60 provides that an article of metal (except precious metal) which is exported from the United

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[5] 19 U.S.C. 1401a.

States for processing abroad may be subject to duty on the value of the processing only upon its return to the United States. To qualify for this duty treatment, the exported article (1) must have been manufactured or subjected to a process of manufacture in the United States; and (2) must be returned "for further processing" in the United States.

The term "processing" refers to such operations as melting, molding, casting, machining, grinding, drilling, tapping, threading, cutting, punching, rolling, forming, plating, and galvanizing.

As in the case of articles imported under subheading 9802.00.40 (repairs or alterations), discussed above, the duty on metal articles processed abroad is assessed against the value of such processing, determined in accordance with U.S. note 3 to subchapter II of chapter 98.

American components assembled abroad (HTS subheading 9802.00.80).—Articles assembled abroad from American-made components may be exempt from duty on the value of such components when the assembled article is imported into the United States under HTS subheading 9802.00.80. This provision enables American manufacturers of relatively labor-intensive products to take advantage of low-cost labor and fiscal incentives in other countries (usually less developed countries) by exporting American parts for assembly in such countries and returning the assembled products to the United States with partial exemption from U.S. duties.

Subheading 9802.00.80 applies to articles assembled abroad in whole or in part of fabricated components, the product of the United States, which—

(1) were exported in condition ready for assembly without further fabrication;

(2) have not lost their physical identity in such articles by change in form, shape, or otherwise; and

(3) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

To be eligible for entry under this subheading, the exported article must be a fabricated U.S. component, i.e., a manufactured article ready for assembly in its exported condition, except for operations incidental to the assembly process. Whereas, integrated circuits, compressors, zippers, and precut sections of a garment are examples of fabricated components, uncut bolts of cloth, lumber, sheet metal, leather, and other materials exported in basic shapes and forms are not considered to be fabricated components for this purpose.

To be considered U.S. components, the articles do not necessarily have to be fabricated from articles or materials originating in the United States. If a foreign article or material undergoes a process of manufacture in the United States resulting in its "substantial transformation" into a new and different article, having a distinctive name, character, or use, then the component that emerges may qualify as a product of the United States for purposes of subheading 9802.00.80.

The assembly operations performed abroad include any method used to join solid components together, such as welding, soldering, gluing, sewing, or fastening with nuts and bolts. Mixing, blending, or otherwise combining liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as assembling for purposes of subheading 9802.00.80.

The rate of duty that applies to the dutiable portion of an assembled article is the same rate that would apply to the imported article. The assembled article is also treated as being entirely of foreign origin for purposes of any import quota or similar restriction applicable to that class of merchandise, and for purposes of country or origin marking requirements. All requirements regarding labeling, radiation standards, flame retarding properties, etc., that apply to imported products apply equally to subheading 9802.00.80 merchandise.

An article imported under subheading 9802.00.80 is treated as a foreign article for appraisement purposes. That is, the full appraised value of the article must first be determined under the usual appraisement provisions. The dutiable value, however, is determined by deducting the cost or value of the American-made fabricated components from the appraised value of the assembled merchandise.

Products from U.S. insular possessions (general note 3(a)(iv).—Imports from the Virgin Islands, Guam, American Samoa, Wake Island, Kingman Reef, Johnson Island, and Midway Islands are entitled to duty-free entry under certain conditions, designed to promote the economic development of these U.S. insular possessions. This provision does not apply to Puerto Rico which is part of the "customs territory of the United States."

As provided in general note 3(a)(iv) of the Tariff Schedule, an article imported directly from a possession is exempt from duty if—

(1) it was grown or mined in the possession; or

(2) it was produced or manufactured in the possession, and the value of foreign materials contained in that article does not exceed 70 percent of its total value. Materials of U.S. origin are not considered foreign for this purpose. Likewise, materials that could be imported into the United States duty-free (except from Cuba or the Philippines) are not counted as foreign materials for purposes of the 70 percent foreign-content limitation; or

(3) in the case of any article excluded from duty-free treatment under section 213(b) of the Caribbean Basin Economic Recovery Act, it was produced or manufactured in the possession, and the value of foreign materials does not exceed 50 percent of its total value.

In addition, an article previously imported into the United States with duty or tax paid thereon, shipped to a possession without benefit of remission, refund, or drawback of such duty or tax, may be returned to the United States duty-free. General note 3(a)(iv) also provides that articles from insular possessions are entitled to no less favorable duty treatment than that accorded to eligible articles under the Generalized System of Preferences and the Carribbean Basin Economic Recovery Act described below.

In applying the 70 percent foreign-materials test, Customs determines the value of the foreign materials by their actual purchase price, plus the transportation cost to the possession, excluding any duties or taxes assessed by the possession and excluding any post-landing charges. The value thus determined is then compared with the appraised value of the products imported into the United States, determined in accordance with the usual appraisement methods. If the differential is 30 percent or more, the foreign materials limitation is satisfied. This procedure is set out in 19 C.F.R. 7.8(d).

As previously noted, the product imported from a possession must have been produced or manufactured there (unless grown or mined there). It is not sufficient for foreign goods to be shipped to a possession for nominal handling or manipulation, followed by a price mark-up to meet the 70 percent test.

Canadian motor vehicles and original equipment therefor (APTA) (general note 3(c)(iii)).—Throughout the HTS are a number of specific provisions which provide for duty-free treatment of imported motor vehicles and specified original equipment parts that qualify as "Canadian articles" under general note 3(c)(iii). These provisions were added to HTS pursuant to the Automotive Products Trade Act of 1965,[6] which was enacted to implement the U.S.-Canadian Automotive Agreement. The purpose of the Agreement was to create a North American common market for motor vehicles and original equipment parts (replacement parts are not covered).

The term "Canadian article" refers to an article produced in Canada but does not include any article produced with non-Canadian or non-U.S. materials unless the article satisfies the criteria set forth in the United States-Canada Free-Trade Agreement (general note 3(c)(vii)).

Most of the product categories established by the Automotive Products Trade Act are applicable to "original motor-vehicle equipment," which is defined in general note 3(c) as a Canadian fabricated component intended for use as original equipment in the manufacture of a motor vehicle in the United States and which was obtained from a Canadian supplier pursuant to "a written order, contract, or letter of intent of a bona fide motor-vehicle manufacturer in the United States." In turn, the phrase "bona fide motor-vehicle manufacturer" is defined as a person determined by the Secretary of Commerce to have produced at least 15 motor vehicles in the previous 12 months and to have the capacity to produce at least 10 motor vehicles per week.

Civil aircraft products (ATCA) (general note 3(c)(iv)).—Title VI of the Trade Agreements Act of 1979 gave the President the authority to proclaim new headnote 3 to part 6C of schedule 6 and to make specific headnotes to designated TSUS items in order to implement the Tokyo Round Agreement on Trade in Civil Aircraft and to provide duty-free treatment, in accordance with the annex to the Agreement for the civil aircraft articles described therein. These changes were implemented by Presidential Proclamation 4707 of December 11, 1979. This duty treatment is continued in the special notes subcolumn of the HTS.

The provisions work much like those implementing the U.S.-Canadian automotive pact in that a number of specific product breakouts are spread throughout the HTS providing duty-free treatment for specifically described articles which are "certified for use in civil aircraft" in accordance with general note 3(c)(iv). That note defines "civil aircraft" as all aircraft other than that purchased by the Department of Defense or the U.S. Coast Guard and sets out the three criteria for an imported aircraft product to qualify for duty-free treatment. The importer must certify that—

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[6] Public Law 89-283, 19 U.S.C. 2001, et seq.

(1) the article has been imported for use in civil aircraft;

(2) that it will be so used; and

(3) that the article has been approved for such use by the Administrator of the Federal Aviation Administration or by the airworthiness authority in the country of exportation (if the FAA recognizes it as an acceptable substitute) or that application for such approval has been made to and accepted by the FAA.

Section 234 of the Trade and Tariff Act of 1984 enacted on October 30, 1984, gave the President the authority to make additional tariff breakouts in designated TSUS items in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Aircraft Agreement pursuant to the extension of the Annex to the Agreement agreed to in Geneva on October 6, 1983. This duty treatment has been continued in the special rates subcolumn of the HTS for the relevant articles.

Generalized System of Preferences

Title V of the Trade Act of 1974, as Amended

The concept of a Generalized System of Preferences (GSP) was first introduced in the United Nations Conference on Trade and Development (UNCTAD) in 1964. Developing countries asserted that one of the major impediments to accelerated economic growth and development was their inability to compete on an equal basis with developed countries in the international trading system. Through tariff preferences in developed country markets, the LDCs claimed they could increase exports and foreign exchange earnings needed to diversify their economies and reduce dependence on foreign aid.

After several international meetings and long internal debate, in 1968 the United States joined other industrialized countries in supporting the concept of GSP. As initially conceived, GSP systems were to be: (1) temporary, unilateral grants of preferences by developed to developing countries; (2) designed to extend benefits to sectors of developing countries which were not competitive internationally; and (3) designed to include safeguard mechanisms to protect domestic industries sensitive to import competition from articles receiving preferential tariff treatment. In the early 1970's, 19 other members of the Organization for Economic Cooperation and Development (OECD) also instituted and have since renewed GSP schemes.

In order to implement their GSP systems, the developed countries obtained a waiver from the most-favored-nation (MFN) clause of Article I of the General Agreement on Tariffs and Trade (GATT), which provides that trade must be conducted among countries on a nondiscriminatory basis. A 10-year MFN waiver was granted in June 1971 and was made permanent in 1979 through the "enabling clause" of the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo Round of GATT Multilateral Trade Negotiations. The enabling clause, which has no expiration date, provides the legal basis for "special and differential" treatment for developing countries. The enabling clause also requires that developing countries accept the principle of graduation, under which such countries agree to assume "increased GATT responsibilities as their economies progress."

U.S. GSP basic authority

Statutory authority for the U.S. Generalized System of Preferences is set forth in title V of the Trade Act of 1974, as amended.[7] Authority to grant GSP duty-free treatment on eligible articles from beneficiary developing countries (BDCs) became effective under that Act on January 3, 1975, for a 10-year period expiring on January 3, 1985. The program was actually implemented on January 1, 1976 under Executive Order 11888. Relatively minor amendments to the statute were made under section 1802 of the Tax Reform Act of 1976 [8] and section 1111 of the Trade Agreements Act of 1979.[9] Title V of the Trade and Tariff Act of 1984 [10] renewed the GSP program for 8½ years until July 4, 1993, with significant amendments effective on January 4, 1985, particularly in the criteria for designating beneficiary countries and limitations on duty-free treatment.

The U.S. Trade Representative (USTR) administers the GSP program through an interagency committee to advise the President on GSP product and country eligibility.

Section 501 of the Trade Act of 1974 as amended authorizes the President to provide GSP duty-free treatment on any eligible article from designated beneficiary developing countries, subject to certain conditions and limits, having due regard for (1) the effect of such action on furthering the economic development of developing countries through the expansion of their exports; (2) the extent other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences on their products; (3) the anticipated impact on U.S. producers of like or directly competitive products; and (4) the extent of the BDC's competitiveness with respect to eligible articles. The program currently provides duty-free treatment on imports of about 4,100 articles from 136 developing countries.

Designation of beneficiary developing countries

The following developed countries are prohibited under section 502(b) as amended by the 1984 Act from designation as BDCs:

Australia
Austria
Canada
Czechoslovakia
European Economic Community member states
Finland
Germany (East)

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[7] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2461-2465.
[8] Public Law 94-455, approved October 4, 1976, 19 U.S.C. 2462.
[9] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2462-2464.
[10] Public Law 98-573, title V, approved October 30, 1984.

Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

The President is also prohibited from designating any country for GSP benefits which:

(1) Is a communist country unless (a) its products receive nondiscriminatory (MFN) treatment; (b) it is a Contracting Party to the GATT and a member of the International Monetary Fund; and (c) it is not dominated or controlled by international communism.

(2) Has nationalized or expropriated U.S. property, including patents, trademarks, or copyrights, unless the President determines and reports to Congress there is adequate compensation, negotiations underway to provide compensation, or a dispute over compensation is in arbitration.

(3) Fails to recognize as binding or enforce arbitral awards in U.S. favor.

(4) Affords "reverse preferences" to other developed countries likely to have a significant adverse impact on U.S. commerce.

(5) Is a member of OPEC or other arrangement and withholds supplies of vital commodity resources or raises their price to unreasonable levels, causing serious disruption of the world economy. Under a 1979 amendment, countries which entered bilateral product-specific agreements with the United States prior to January 3, 1980 (i.e., Venezuela, Ecuador, and Indonesia) are exempt from this condition unless they subsequently interrupt or terminate oil supplies to the United States.

(6) Aids or abets international terrorism.

(7) Has not taken or is not taking steps to afford internationally recognized workers rights to its workers.[11]

The President may waive conditions (2), (3), (6), and (7), if he determines and reports with reasons to the Congress that designation of the particular country is in the national economic interest.

In addition, the President must take certain other factors into account under section 502(c) as amended by the 1984 Act in designating BDCs: an expressed desire of the country to be designated; the country's level of economic development; whether other major developed countries extend GSP to the country; the extent the country has assured the United States it will provide "equitable and reasonable access" to its markets and basic commodity resources and refrain from engaging in unreasonable export practices; the extent the country is providing adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; the extent the country has taken action to reduce distorting investment practices and policies and reduce or eliminate barriers to trade in services; and whether the country has taken or is taking steps to afford its workers internationally recognized worker rights.

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[11] Defined by amendment under section 503 of the 1984 Act for purposes of GSP to include:
"(A) the right to association;
"(B) the right to organize and bargain collectively;
"(C) a prohibition on the use of any form of forced or compulsory labor;
"(D) a minimum age for the employment of children; and
"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health".

Before designating any beneficiary country, the President must notify the Congress of his intention and the considerations entering his decision. Before terminating designation of any beneficiary, the President must provide the Congress and the country concerned at least 60 days advance notice of his intention, together with the reasons. The President must withdraw or suspend the designation if he determines the country no longer meets the conditions for designation.

The countries currently designated as BDCs of GSP are listed under general note 3(c)(11) of the Harmonized Tariff Schedule of the United States.

Eligible articles

The President designates articles under section 503 eligible for GSP duty-free treatment after considering advice required through public hearings, from the International Trade Commission (ITC) on the probable domestic economic impact, and from Executive branch agencies.

GSP duty-free treatment is prohibited by statute on textile and apparel articles subject to textile agreements; watches, except those watches entered after June 30, 1989, that the President specifically determines after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States insular possessions;[12] import-sensitive electronic articles; import-sensitive steel articles; footwear, handbags, luggage, flat goods, (e.g., wallets, change purses, eyeglass cases), work gloves, and leather wearing apparel which were ineligible for GSP as of April 1, 1984; and import-sensitive semi-manufactured and manufactured glass products. Articles are ineligible for GSP during any period they are subject to import relief under section 201-203 of the Trade Act of 1974 or to national security actions under section 232 of the Trade Expansion Act of 1962.

The President must also exclude any other articles he determines to be import sensitive in the context of GSP. In order to administer this requirement, the USTR has established by regulation an interagency procedure for annual review of petitions from any interested party to have new articles added to, or removed from, the GSP list. The committee also considers modifications on its own motion.

GSP duty-free treatment applies only to an eligible article which meets the following rule-of-origin requirements:

(1) The article must be imported directly from a BDC into the U.S. customs territory; and

(2) The sum of (a) the cost or value of materials produced in a beneficiary country, plus (b) the direct cost of processing per-

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[12] This amendment was made by section 1903 of the Omnibus Trade and Competitiveness Act of 1988 Public Law 100-418, approved August 23, 1988.

formed in such country is not less than 35 percent of the appraised value of the article when it enters into the U.S. customs territory.

Materials and processing costs in two or more countries which are members of the same association of countries which is a customs union or free trade area may be treated as one BDC and cumulated to meet the 35 percent minimum local content. Materials imported into a BDC may be counted toward the 35 percent minimum valued-added requirement only if they are substantially transformed into new and different articles in the BDC, before they are incorporated into the GSP eligible article.

Up until a recent court decision, Customs Regulations on GSP product eligibility required that, in addition to the statutory 35 percent added-value requirement, the imported article itself must be a product of the exporting BDC (i.e., have undergone there "substantial transformation" in such BDC), which is not specifically required in the GSP statute. The regulation was challenged in the U.S. Court of International Trade (*Madison Galleries, Ltd.* v. *U.S.*), which in June 1988, decided that only the 35 percent added-value requirement needs to be fulfilled. The decision was appealed by the U.S. Customs Service and affirmed on March 8, 1989, by the U.S. Court of Appeals for the Federal Circuit.

Limitations on preferential treatment

The President has general authority under section 504(a) to withdraw, suspend, or limit application of GSP and restore MFN duties with respect to any article or any country after considering the factors in section 501 and 502(c), but he cannot establish any intermediate rates of duty. Since 1981, this authority has been used in the context of the annual interagency review process for "discretionary graduation" from GSP of particular products from particular countries which have demonstrated their competitiveness and to promote a shifting of benefits to less advanced developing countries.

Pursuant to the authority of this section, the President on January 29, 1988, notified the Congress of his intention to remove Hong Kong, the Republic of Korea, Singapore, and Taiwan from their status as beneficiaries under the GSP program.[13] This so-called graduation was effective on January 2, 1989, and was based on the President's assessment that these countries had "achieved an impressive level of economic development and competitiveness, which can be sustained without the preferences provided by the program."

In addition to the annual review of petitions on article eligibility and discretionary graduation of particular products from particular countries, section 504 as amended by the 1984 Act applies statutory "competitive need" limitations of GSP duty-free treatment, subject to waiver under certain conditions. The basic purposes of the competitive need limitations are to (1) establish a benchmark for determining when products from particular countries are competitive in the U.S. market and therefore no longer need preferential tariff treatment; and (2) to reallocate GSP benefits to less competitive producers. The limits have also provided some measure of protection to domestic producers of like or directly competitive products.

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[13] Message from the President of the United States transmitting notification of his intent to remove Hong Kong, the Republic of Korea, Singapore, and Taiwan from the list of beneficiary developing countries under the Generalized System of Preferences (GSP), pursuant to 19 U.S.C. 2462(a), House Document 100-162, February 1, 1988.

Under the competitive need limits, if imports of a particular article from a particular BDC exceed either (1) a value level adjusted annually in relation to changes in the U.S. gross national product (GNP) (increased from $25 million in 1974 to about $82.5 million in 1988) or (2) 50 percent of total U.S. imports of the article in a particular calendar year, GSP treatment on that article from that country must be removed and the normal rate of duty imposed on all imports of the article from that country by July 1 of the following year. GSP treatment may be reinstated in a subsequent calendar year if imports of the product from the excluded country have fallen below the competitive need ceilings then in effect during the preceding calendar year.

There are four statutory circumstances in which competitive need limits may not apply:

> (1) If the President determines that an article like or directly competitive with a particular GSP article was not produced in the United States on January 3, 1985, then that GSP product is exempt from the 50-percent, but not the dollar value, competitive need limit.
>
> (2) The President may waive the 50-percent, but not the dollar, competitive need limit on articles for which total U.S. imports are de minimis, i.e., not more than $5 million during the preceding calendar year indexed annually to changes in the U.S. GNP since 1979.
>
> (3) Neither of the competitive need limits applies after at least 60 days advance notice to the Congress to any BDC the President determines to be a least developed developing country.
>
> (4) The President may waive the competitive need limits for a particular country based on a determination that (a) there has been an historical preferential trade relationship between the United States and such country; (b) there is a treaty or trade agreement in force covering economic relations between such country and the United States; and (c) such country does not discriminate against or impose unjustifiable or unreasonable barriers to U.S. commerce. This waiver authority which was designed for possible exemption of the Philippines, has never been utilized.

As amended by the 1984 Act, section 504 required the President to conduct a general review of eligible articles by January 4, 1987, and periodically thereafter, and report to the Congress by January 4, 1988, on the actions he had taken to withdraw, suspend, or limit GSP benefits for failure to take actions described in the country designation criteria.

If, after any general product review, the President determines that a country has demonstrated a sufficient degree of competitiveness in a particular article relative to other BDCs, then he must reduce the competitive need limits on that article from that country to $25 million, adjusted annually to changes in the U.S. GNP since 1984, or 25 percent of total U.S. imports of the article whichever is larger.

The President may waive competitive need limits on any article as of January 4, 1987, if he (1) receives ITC advice on whether any U.S. industry is likely to be adversely affected; (2) determines a waiver is in the national economic interest based upon the country designation factors under section 501 and 502(c) as amended; and (3) publishes his determination. In making the national interest determination the President must give great weight to (1) assurances of equitable and reasonable market access in the BDC; and (2) the extent the country provides adequate and effective intellectual property rights protection. Total waivers for all countries above existing competitive need limits cannot exceed 30 percent of total GSP duty-free imports in any year, of which not more than one-half (i.e., 15 percent of total GSP duty-free imports) may apply to waivers on articles from countries which account for at least a 10-percent share of total GSP duty-free imports or have a per capita GNP of $5,000 or more in that year.

Any BDC which reaches a per capita GNP level of $8,500 in a particular calendar year, indexed annually by 50 percent of the annual change in U.S. GNP since 1984, must be graduated from GSP on all eligible articles over a 2-year phaseout period.

Other provisions

Section 505 as amended by the 1984 Act requires the President to submit a report to the Congress on the operation of the GSP program by January 4, 1990, as well as an annual report on the status of internationally recognized worker rights within each BDC.

Section 506 as added by the 1984 Act requires appropriate U.S. agencies to assist BDCs to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of foodstuff production for their own citizens.

Caribbean Basin Initiative (CBI)

CARIBBEAN BASIN ECONOMIC RECOVERY ACT

The Caribbean Basin Economic Recovery Act,[14] commonly referred to as the Caribbean Basin Initiative or CBI, was enacted on August 5, 1983, authorizing certain U.S. unilateral and preferential trade and tax measures for Caribbean Basin countries and territories.

The United States developed this program for responding to the economic crisis in the Caribbean in close consultation with governments and private sectors of potential recipients and with other donor countries in the region. On February 24, 1982, President Reagan outlined the CBI before the Organization of American States and on March 17, 1982, ~~he first~~ submitted this plan to the Congress. H.R. 7397 containing amended versions of the trade and tax proposals, was passed by the House of Representatives in the 97th Congress on December 17, 1982, but was not acted on by the

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[14] Public Law 98-67, title II, approved August 5, 1983, 19 U.S.C. 2701 et seq.

Senate. The President resubmitted the House-passed version of the plan on February 23, 1983; the Initiative as further amended became title II of the conference report on H.R. 2973, to repeal the withholding of tax from interest and dividends, agreed to by both Houses on July 28, 1983. Separate foreign assistance legislation increased aid to the region as the third element of the program.

The centerpiece of the CBI is authority granted to the President under the Act for 12 years, until September 30, 1995, to provide unilateral duty-free treatment on U.S. imports of eligible articles from designated Caribbean Basin countries and territories. Duty-free treatment became effective as of January 1, 1984, for imports from 20 designated beneficiary countries.[15]

Beneficiary countries or territories

Section 212 of the Act lists the following 27 countries and territories as potentially eligible for designation by the President as CBI beneficiary countries:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Cayman Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
Saint Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Turks and Caicos Islands
Virgin Islands, British

A country or territory cannot be designated as a beneficiary of CBI trade or tax benefits if it:

(1) Is a Communist country;

(2) Has nationalized or expropriated U.S. property including any patent, trademark, or other intellectual property without compensation or submission to arbitration;

(3) Fails to recognize awards arbitrated in favor of U.S. citizens;

(4) Affords preferential tariff treatment to products of other developed countries that has or is likely to have a significant adverse effect on U.S. commerce;

(5) Broadcasts U.S. copyrighted material without the owners' consent; and

(6) Has not signed an extradition agreement with the United States.

The President may waive conditions (1), (2), (3), and (5) if he determines that designation of the particular country would be in the national economic or security interest of the United States and so reports to the Congress.

In addition, the President must take into account certain other factors under section 212(c) in determining whether to designate a country a CBI beneficiary: the country's desire to be designated;

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[15] Anguilla, Cayman Islands, Guyana, Nicaragua, Panama, Suriname, and the Turks and Caicos Islands are not currently designated.

economic conditions and living standards in the country; the extent the country will afford reasonable access to U.S. products and observes international trading rules; the degree the country uses export subsidies or imposes export performance or local content requirements; the degree the country's trade policies contribute to regional revitalization and the country is undertaking self-help measures; the degree its workers enjoy reasonable workplace conditions and collective bargaining rights; the extent the country prohibits its nationals from broadcasting copyrighted materials without permission; the extent the country provides adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property; and the extent to which the country is prepared to cooperate in the administration of the CBI. The President must notify the Congress of his intention to designate countries, together with the considerations entering the decision.

The President may later withdraw or suspend the designation of any country as a beneficiary country or withdraw, suspend, or limit the application of duty-free treatment for any eligible article of such country if he determines that, based on changed circumstances, such country would be barred from designation under the criteria set forth in subsection (b) of section 212.[16] The President is required to publish notice of such proposed action in the Federal Register at least 30 days prior to taking such action. During such 30-day notice period, USTR is required to hold a public hearing and accept public comments on the proposed action.

Eligible articles

CBI duty-free treatment under section 213(a) of the Act applies only to an article which meets three "rule of origin" requirements:

(1) The article must be imported directly from a beneficiary country into the U.S. customs territory;

(2) The article must contain a minimum 35 percent local content of one or more beneficiary countries (up to 15 percent of the total value of the articles from U.S.-made materials may count toward the 35 percent requirement); and

(3) The article must be wholly the growth, product, or manufacture of a beneficiary country, or, if it contains foreign materials, be substantially transformed into a new or different article in a beneficiary country.

Other provisions and regulations preclude minor pass through operations or transshipments from qualification. The Tax Reform Act of 1986 [17] amended the 1983 CBI legislation to require increasing amounts of CBI feedstock in order for ethanol to qualify for duty-free treatment—30 percent in 1987; 60 percent in 1988; and 75 percent in 1989 and thereafter. Several companies were "grandfathered" for two years, allowing them to operate under pre-1986 criteria through 1989.

The Omnibus Trade and Competitiveness Act of 1988 [18] extended the "grandfather" through the end of 1989 for six dehydration plants already built or under construction but imposed an import cap of 20 million gallons per facility. The Act also requested reports by the U.S. International Trade Commission (ITC) and the General Accounting Office (GAO) on whether or not the current local feedstock requirements make CBI ethanol production economically feasible. As of January 1, 1990, all CBI ethanol imports will be subject to the 75 percent local feedstock requirement.

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[16] Section 1909 of the Omnibus Trade and Competitiveness Act (P.L. 100-418).

[17] Public Law 99-514, October 22, 1986, section 423.

[18] Public Law 100-418, August 23, 1988, section 1910.

Section 213(b) exempts the following articles from duty-free treatment: textiles and apparel, footwear, handbags, luggage, flat goods (such as wallets, change purses and key and eyeglass cases) work gloves, leather wearing apparel, canned tuna, petroleum and petroleum products, and watches and watch parts contain-components from Communist countries.

Whenever a Presidential proclamation pursuant to section 22 of the Agricultural Adjustment Act to protect a U.S. sugar price support program is in effect, duty-free treatment on sugar imports from all CBI beneficiary countries except the Dominican Republic, Guatemala, and Panama is subject to the "competitive need limitations" in effect under the Generalized System of Preferences program or, if the country so requests, to absolute quotas set by the President. Sugar imports from the three countries are subject to duty-free absolute quotas. The President may adjust or suspend any of the limits or duty-free treatment depending on U.S. market conditions or to protect the price support program. More restrictive quota programs proclaimed under other provisions of law take precedence over the limits of the Act.

Section 213(c) requires the President to suspend duty-free treatment on imports of sugar and beef products from any beneficiary country that does not submit a satisfactory stable food production plan within 90 days after its designation, or while the country is not making a good faith effort to implement the plan or the plan is not achieving its purpose. The President must withhold suspension if the country agrees to consultations within a reasonable period of time and undertakes to formulate and implement remedial action.

The import relief procedures and authorities under section 201-203 of the Trade Act of 1974 and national security measures under section 232 of the Trade Expansion Act of 1962 apply to imports from CBI beneficiary countries. Section 213(e) authorizes the President to suspend CBI duty-free treatment and proclaim a rate of duty or other relief measures as on imports of the article from other countries. Alternatively, the President may maintain duty-free treatment or establish a margin of preference on imports from CBI countries. In its report to the President on import relief investigations covering CBI eligible articles, the ITC must state whether its findings with respect to serious injury to the domestic industry and its recommended remedy apply to imports from CBI beneficiary countries.

Under a special procedure under section 213(b) petitioners for import relief on agricultural perishable products may also file a request with the Secretary of Agriculture for emergency relief. Within 14 days, the Secretary must determine whether there is reason to believe a CBI perishable product is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and recommend to the President emergency relief, if warranted. The President must determine within 7 days after receiving the Secretary's recommendation whether to take emergency action restoring the normal rate of duty pending final action on the import relief petition.

Section 215 requires the ITC to report annually to the Congress on the actual economic impact and assess the probable future effects of the Act on the U.S. economy generally and on specific domestic industries. Section 216 also requires an annual report to the Congress by the Secretary of Labor on the impact of the CBI on U.S. labor. Section 217 required a feasibility study by the Secretary of State of establishing a Caribbean Trade Institute in Harlem, New York City.

Measures for Puerto Rico and U.S. insular possessions

The Act contains a number of provisions to maintain and improve the competitive position of Puerto Rico and the U.S. insular possessions (including the Virgin Islands, American Samoa, Guam):

(1) Imports from Puerto Rico and the Virgin Islands may be counted toward the 35 percent minimum local content rule of origin requirement for CBI duty-free treatment. Section 235 of the Tariff and Trade Act of 1984 amended section 213(a) also to permit articles from CBI beneficiary countries to enter under bond for processing or manufacture in Puerto Rico without payment of duty upon withdrawal if they meet CBI rule of origin requirements.

(2) The permissible foreign content is increased from 50 to 70 percent for duty-free treatment of imports of CBI eligible articles from U.S. insular possessions under general note of the Harmonized Tariff Schedule of the United States.

(3) Duty-free entry of alcoholic beverages by returning U.S. residents arriving directly from insular possessions is increased from 4 to 5 liters provided at least one liter is the product of an insular possession.

(4) Section 221 amends section 7652 of the Internal Revenue Code to require that all excise taxes collected on foreign rum imported into the United States, whether or not from Caribbean countries, be paid to the treasuries of Puerto Rico and the Virgin Islands. Section 214(c) requires the President to consider compensatory measures for the governments of Puerto Rico and the Virgin Islands if there is a reduction in the amount of rum excise tax rebates.

(5) The term "industry" under the import relief provisions of section 201 of the Trade Act of 1974 is clarified to enable producers in the insular possessions to petition for import relief.

(6) Nontoxic rum stillage discharges in the Virgin Islands are exempt from certain provisions of the Federal Water Pollution Control Act if the discharges are 1,500 feet from the shore and are determined by the Governor of the Virgin Islands not to constitute a health or environmental hazard.

Tax measures

Section 222 of the Act amends section 274(h) of the Internal Revenue Code to allow deductions for business expenses incurred while attending conventions and meetings in a designated Caribbean Basin beneficiary country (or Bermuda) if it enters into an executive agreement with the United States to provide, on a reciprocal basis, for information relating to U.S. tax matters to be made available to U.S. tax officials, including agreement to exchange bearer share and bank account information for criminal tax purposes. No deduction is available for attending a convention in a country found by the Secretary of the Treasury to discriminate in its tax laws against conventions held in the United States. The provision applies to conventions beginning after June 30, 1983, if an exchange of information agreement is in effect.

The Secretary of the Treasury was required to report within 90 days after enactment of the Act on the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes and the effect on Federal revenues of such use, any information on the relationship of such use to drug trafficking and other criminal activities, and on current anti-tax haven enforcement activities of the Department of the Treasury.

Customs Valuation

Historical background

In order to assess applicable duty rates under the Harmonized Tariff Schedule of the United States (HTS) and to collect appropriate import statistics, the dutiable value of all imported merchandise must be determined. The process by which Customs determines the dutiable value of imported merchandise is referred to as "appraisement" or "valuation."

Merchandise exported to the United States on or after July 1, 1980, is subject to appraisement under a uniform system of valuation established by title II of the Trade Agreements Act of 1979. Title II, which implements the Customs Valuation Agreement (entitled the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade) negotiated as one of the Tokyo Round MTN trade agreements, was put into effect by Presidential Proclamation 4768 of June 28, 1980.[19]

Title II revised section 402 of the Tariff Act of 1930 [20] and repealed the American Selling Price (ASP) method of valuation. However, under section 204(c) of the Trade Agreements Act of 1979, the ASP method of valuation would continue to apply to certain rubber footwear exported to the United States before July 1, 1981. Title II also repealed the alternative valuation system under section 402a of the Tariff Act of 1930.[21]

Prior to the Trade Agreements Act, the U.S. valuation system was complicated by the fact that two separate valuation standards existed side-by-side—commonly referred to as the "old law" and the "new law." Section 402a of the Tariff Act of 1930 was called the "old law" because it was enacted as part of the original Tariff Act of 1930. It provided for the following order of progression in appraising merchandise: (1) foreign value or export value, whichever is higher; (2) United States value; (3) cost of production.

It also provided for the application of the American Selling Price (ASP) basis of appraisement for certain designated articles such as benzenoid chemicals and certain footwear. The ASP method was based on the value of a domestically produced product rather than the imported product in order to provide greater protection to the U.S. industry from foreign competition.

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[19] 45 Fed. Reg. 45135 (1980).

[20] 19 U.S.C. 1401a.

[21] 19 U.S.C. 1402.

During the early 1950's the Department of the Treasury proposed the elimination of the Foreign Value basis of appraisement, which as its name implies is based on the value of merchandise sold in foreign markets. The Department of the Treasury argued that data to determine Export Value were more readily available and the elimination of Foreign Value would streamline the appraisement process by obviating the need to make simultaneous appraisements under Export Value and Foreign Value.

In response to these proposals, the Customs Simplification Act of 1956 created in effect a new group of valuation standards. These standards were contained in section 402 of the Tariff Act of 1930 [22] and referred to as the "new law." The "new law" eliminated the Foreign Value standard and made Export Value the primary basis of appraisement. With certain modifications, both U.S. Value and Cost of Production (renamed the Constructed Value) were retained as the first and second alternative standards. The meaning of each of the standards was modified, however, by changes in the statutory language and by the inclusion in the law of definitions for certain of the terms.

However, the Congress was unwilling to make the changes applicable to all imported articles. Because the new provisions were expected to have a duty-reducing effect for many articles, the Secretary of the Treasury was instructed to prepare a list of commodities which, if appraised under the new valuation standards, would have been appraised at 95 percent or less of the value at which they were actually appraised in the 12 months ending June 30, 1954 (i.e., dutiable value reduced by 5 percent or more). The articles so identified were published in Treasury Decision 54521 (January 20, 1958), which is referred to as "the Final List" and such articles were to continue to be appraised under the "old law" standards which remained in section 402a of the Tariff Act. Thus, after the enactment of the Customs Simplification Act of 1956,[23] there were now nine separate bases of appraisement (five under the old law and four under the new) which could be applicable to imported products.

It was largely this complexity of U.S. valuation laws as well as foreign objections to the American Selling Price basis of appraisement which prompted many of our trading partners to enter into negotiations at the Tokyo Round of the MTN on the development of a new system of customs valuation.

The GATT Valuation Agreement

The Customs Valuation Agreement, which was signed by most major U.S. trading partners at the conclusion of the Tokyo Round of multilateral trade negotiations,[24] consists of four major parts in

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[22] 19 U.S.C. 1401a.

[23] Act of August 2, 1956, ch. 887.

[24] Current signatories to the Valuation Agreement are: Argentina; Australia; Austria; Botswana; Brazil; Canada; Czechoslovakia; European Economic Community (EEC); Finland; Hong

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addition to a preamble and three annexes. Part I sets out the substantive rule of customs valuation, the substance of which was codified in U.S. law by the Trade Agreements Act of 1979 as an amendment to section 402 of the Tariff Act of 1930. Part II provides for the international administration of the agreement and for dispute resolution among signatories. Part III provides for special and differential treatment for developing countries, and Part IV contains so-called final provisions dealing with matters such as acceptance and accession of the agreement, reservations and servicing of the agreement.

Administration and dispute resolution.—As mentioned above, the agreement establishes two committees—a "Committee on Customs Valuation" (referred to as "the Committee") and a "Technical Committee on Customs Valuation (referred to as the "Technical Committee")—to administer the agreement and creates a mechanism for resolving disputes between parties to the agreement.

The Committee, which is composed of representatives from each of the parties, meets annually in Geneva "to consult on matters relating to the administration of the customs valuation system by any party to Agreement as it might affect the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the parties." The GATT secretariat acts as the secretariat to the Committee and the Office of the U.S. Trade Representative is the U.S. representative to this Committee.

The Technical Committee was created under the auspices of the Customs Cooperation Council (CCC) to carry out the responsibilities assigned to it by the parties and set forth in Annex II to the agreement with a view towards achieving uniformity in interpretation and application of the agreement at the technical level. Among the responsibilities assigned to the Technical Committee are—

(i) to examine specific technical problems arising in the administration of the customs valuation systems and to give advisory opinions offering solutions to such problems;

(ii) to study, as requested and prepare reports on valuation laws, procedures and practices as they relate to the agreement; and

(iii) to furnish such information and advice on customs valuation matters as may be requested by parties to the agreement.

The Technical Committee meets periodically in Brussels and the U.S. Customs Service serves as the U.S. representative to this technical committee.

Dispute resolution.—Several steps are provided for a party to follow if it considers that any benefit accruing to it under the agreement is being nullified or impaired or if any objectives of the agreement are being impeded by the actions of another party. First, the aggrieved party should request consultations with the party in question with a view to reaching a mutually satisfactory solution.

Kong; Hungary; India; Japan; Korea, Republic of; Lesotho; Malawi; Mexico; Turkey; New Zealand; Norway; Romania; South Africa; Sweden; Switzerland; United States; Yugoslavia; and Zimbabwe.

If no mutually satisfactory solution is reached between the parties within a reasonably short period of time, the Committee shall meet at the request of either party (within 30 days or receiving such request) and attempt to facilitate a mutually satisfactory solution. If the dispute is of a technical nature, the Technical Committee will be asked to examine the matter and report to the Committee within 3 months.

In the absence of a mutually agreeable solution from the Committee up to this point, the Committee shall, upon the request of either party, establish a panel (within 3 months from the date of the parties' request for the Committee to investigate where the matter is not referred to the Technical Committee, otherwise within 1 month from the date of the Technical Committee's report) to examine the matter and make such finding as will assist the Committee in making recommendations or giving a ruling on the matter.

After the investigation is complete, the Committee shall take appropriate action (in the form of recommendations or rulings). If the Committee considers the circumstances to be serious enough, it may authorize one or more parties to suspend the application to any other party of obligations under the valuation agreement.

Special and different treatment.—Part III of the agreement allows developing countries which are party to the agreement—

(i) to delay application of its provisions for a period of five years from the date the agreement enters into force;

(ii) to delay application of articles 1, 2(b)(iii) and 6 (both of which provide for a determination of the computed value of imported goods) for a period of three years; and

(iii) to receive technical assistance (such as training of personnel, assistance in preparing implementation measures and advice on the application of the agreement's provisions) upon request, from developed countries party to the agreement.

Current law [25]

Section 402 of the Tariff Act of 1930 [26] as amended by the Trade Agreements Act of 1979 establishes "Transaction Value" as the primary basis for determining the value of imported merchandise. Generally, transaction value is the price actually paid or payable for the goods, with additions for certain items not included in that price.

If the first valuation basis cannot be used, the secondary bases are considered. These secondary bases, listed in the order of precedence for use, are: transaction value of identical or similar merchandise; deductive value; computed value.

The order of precedence of the last two bases can be reversed if the importer so requests. Each of these bases is discussed in detail below:

Transaction Value of Imported Merchandise.—Several concepts relating to the transaction value of imported merchandise are also applicable to the transaction value of identical merchandise, and of similar merchandise which are discussed in the next section. These concepts, concerning the nature of transaction value itself, are discussed in terms of the transaction value of imported merchandise. The discussion in the next section of the transaction value of identical merchandise and similar merchandise will focus on the unique features applicable to those standards.

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[25] Most of the description of current law was taken from "Customs Valuation Under the Trade Agreements Act of 1979," Department of the Treasury, U.S. Customs Service, Office of Commercial Operations, October 1981.

[26] 19 U.S.C. 1401a.

DEFINITIONS

The transaction value of imported merchandise (i.e., the merchandise undergoing appraisement) is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

A. The packing costs incurred by the buyer;

B. Any selling commission incurred by the buyers;

C. The value of any assist; [27]

D. Any royalty or license fee that the buyer is required to pay as a condition of the sale;

E. The proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise.

These amounts (A through E) are added only to the extent that each (1) is not included in the price, and (2) is based on information establishing the accuracy of the amount. If sufficient information is not available, then the transaction value cannot be determined; and the next basis of value, in order of precedence, must be considered for appraisement.

The price actually paid (or payable) for the imported merchandise is the total payment, excluding international freight, insurance, and other C.I.F. charges, that the buyer makes to the seller.

Amounts to be disregarded in determining transaction value are:

A. The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.

B. Any decrease in the price actually paid or payable that is made or effected between the buyer and seller after the *date of importation* of the goods into the United States.

As well as, *if identified separately:*

C. Any reasonable cost or charge incurred for: (1) Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the goods importation into the United States, or (2) transporting the goods after importation.

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[27] An "assist" is any of the following items that the buyer of imported merchandise provides directly or indirectly, and free of charge or at reduced cost, for use in the production of or the sale for export to the United States of the imported merchandise:

Materials, components, parts, and similar items incorporated in the imported merchandise;

Tools, dies, molds, and similar items used in producing the imported merchandise;

Merchandise consumed in producing the imported merchandise;

Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States.

The last item listed above ("Engineering, development . . .") will not be treated as an assist if the service or work is (1) performed by a person domiciled within the United States, (2) performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and (3) incident to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States.

D. The customs duties and other Federal taxes, including any Federal excise tax for which sellers in the United States are ordinarily liable.

LIMITATIONS ON THE APPLICABILITY OF TRANSACTION VALUE

The transaction value of imported merchandise is the appraised value of that merchandise, provided certain limitations do not exist. If any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered.

The limitations can be divided into four groups: restrictions on the disposition or use of the merchandise, conditions for which a value cannot be determined, proceeds accruing to the seller, and related-party transactions where the transactions value is not acceptable. Each is discussed separately below.

1. Restrictions.—With regard to the first category of limitations which preclude the use of transaction value, is the imposition of restrictions by a seller on a buyer's disposition or use of the imported merchandise. However, exceptions are made to this rule. Thus certain restrictions are acceptable, and their presence will still allow the use of transaction value.

The acceptable restrictions are: (a) those imposed or required by law, (b) those limiting the geographical area in which the goods may be resold, and (c) those not substantially affecting the value of the goods. An example of the last restriction occurs when a seller stipulates that a buyer of new-model cars cannot sell or exhibit the cars until the start of the new sales year.

2. Conditions.—Secondly, if the sale of, or the price actually paid or payable for, the imported merchandise is subject to any condition or consideration for which a value cannot be determined, then transaction value cannot be used. Some examples of this group include when the price of the imported merchandise depends on (a) the buyer's also buying from the seller other merchandise in specified quantities, (b) the price at which the buyer sells other goods to the seller, or (c) a form of payment extraneous to the imported merchandise, such as, the seller's receiving a specified quantity of the finished product that results after the buyer further processes the imported goods.

3. Proceeds.—Under the third category of impermissable restrictions, if part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer accrues directly or indirectly to the seller, then transaction value cannot be used. There is an exception however.

The exception is that, if an appropriate adjustment can be made for the partial proceeds the seller receives, then transaction value can still be considered. Whether an adjustment would be made would depend on whether the price actually paid or payable includes such proceeds and, if it does not, the availability of sufficient information to determine the amount of such proceeds.

4. Relationship.—Finally, the relationship between the buyer and seller may preclude the application of transaction value. The fact that the buyer and seller are related[28] does not automatically negate using their transaction value; however, the transaction value must be acceptable under prescribed procedures.

To be acceptable for transaction value, relationship between the buyer and seller must not have influenced the price actually paid or payable.

Alternatively, the transaction value may be acceptable if the imported merchandise closely approximates any one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

(a) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States,

(b) The deductive value or computed value for identical merchandise or similar merchandise, or

(c) The transaction value of imported merchandise in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical to the imported merchandise under apprisement, except for having been produced in a different country. No two sales to unrelated buyers can be used for comparison unless the sellers are unrelated.

The test values are used for comparison only. They do not form a substitute basis of valuation.

In determining if the transaction value is close to one of the foregoing test values (a, b, or c), an adjustment is made if the sales involved differ in:

> commercial levels, quantity levels; the costs, commissions, values, fees, and proceeds described in A through E of the "Definition" of value; and the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

As stated, the test values are alternatives to the relationship criterion. If one of the test values is met, it is not necessary to examine the question of whether the relationship influenced the price.

Transaction value of identical merchandise or similar merchandise.—If the transaction value of imported merchandise cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise. If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise.

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[28] For appraisement purposes, any of the following persons are considered related—

Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants;

Any officer or director of an organization and such organization;

An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization;

Partners;

Employer and employee;

Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

The same additions, exclusions, and limitations, previously discussed in determining the transaction value of imported merchandise, also apply in determining the transaction value of identical or similar merchandise. Therefore the discussion will not be repeated in this section.

Besides the data common to all three transaction values, certain factors specifically apply to the transaction value of identical merchandise or similar merchandise. These factors concern (a) the exportation date, (b) the level and quantity of sales, (c) the meaning, and (d) the order of precedence of identical merchandise and of similar merchandise.

a. Exportation date.—The identical merchandise, or similar merchandise, for which a transaction value is being determined must have been sold for export to the United States and exported at or about the same time as the merchandise being appraised.

b. Sales level/quantity.—The transaction value of identical merchandise (or similar merchandise) must be based on sales of identical merchandise (or similar merchandise) at the same commercial level and, in substantially the same quantity, as the sales of the merchandise being appraised. If no such sale exists, then sales at either a different commercial level or in different quantities, or both, can be used, but must be adjusted to take account of any such difference. Any adjustment must be based on sufficient information, that is, information establishing the reasonableness and accuracy of the adjustment.

c. Definition.—(1) The term *"identical merchandise"* means merchandise that is:

identical in all respects to the merchandise being appraised;

produced in the same country as the merchandise being appraised; and

produced by the same person as the merchandise being appraised.

If merchandise meeting all three criteria cannot be found, then identical merchandise is merchandise satisfying the first two criteria but produced by a different person than the merchandise being appraised. Merchandise can be identical to the merchandise being appraised and still show minor differences in appearance. However, identical merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

(2) The term *"similar merchandise"* means merchandise that is—

produced in the same country and by the same person as the merchandise being appraised,

like the merchandise being appraised in characteristics and component materials, and

commercially interchangeable with the merchandise being appraised.

If merchandise meeting the foregoing criteria cannot be found, then similar merchandise is merchandise having the same country of production, like characteristics and component materials, and commercial interchangeability but produced by a different person.

In determining whether goods are similar, some of the factors to be considered are the quality of the goods, their reputation, and the existence of a trademark. It is noted, however, that similar merchandise does not include merchandise that incorporates or reflects engineering, development, artwork, design work, and plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States.

d. Order of Precedence.—Sometimes more than one transaction value will be present, that is, for identical merchandise produced by the same person, for identical merchandise produced by another person, for similar merchandise produced by the same person, and for similar merchandise produced by another person. If this occurs, one value must take precedence.

As stated previously, accepted sales at the same level and quantity take precedence over sales at different levels and/or quantities. The order of precedence can be summarized as:

(1) Identical merchandise produced by the same person;
(2) Identical merchandise produced by another person;
(3) Similar merchandise produced by the same person; and
(4) Similar merchandise produced by another person.

It is possible that two or more transaction values for identical merchandise (or similar merchandise) will be determined. In such a case, the lowest value will be used as the appraised value of the imported merchandise.

Deductive value.—If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is calculated for the merchandise being appraised. Deductive value is the next basis of appraisement to be used, unless the importer designated, at entry summary, computed value as the preferred method of appraisement. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts back to deductive value.

If an assist is involved in a sale, that sale cannot be used in determining deductive value. So any sale to a person who supplies an assist for use in connection with the production or sale for export of the merchandise concerned is disregarded for deductive value.

Basically deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

One of three prices constitutes the unit price in deductive value. The price used depends on when and in what condition the merchandise concerned is sold in the United States. If the merchandise is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold at or about such date.

If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

Finally, if the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised. Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise being appraised, after further processing, is sold before the 180th day after the date of such importation.

After determining the appropriate price, packing costs for the merchandise concerned must be added to the price used for deductive value, provided such costs have not otherwise been included. These costs are added, regardless of whether the importer or the buyer incurs the cost. Packing costs include the cost (a) of all containers and coverings of whatever nature and (2) of packing, whether for labor or materials, used in placing the merchandise in condition, packed ready for shipment to the United States.

Certain other items are not a part of deductive value and must be deducted from the unit price. The items are:

> (1) *Commissions or profit and general expenses.*—Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, applicable to sales in the United States of imported merchandise that is (a) of the same class or kind as the merchandise concerned; and (b) regardless of the country of exportation.
>
> (2) *Transportation/insurance costs.*—The usual and associated costs of transporting and insuring the merchandise concerned (a) from the country of exportation to the place of importation in the United States; and (b) from the place of importation to the place of delivery in the United States, provided these costs are not included as a general expense under the preceding paragraph.
>
> (3) *Customs duties/Federal taxes.*—The customs duties and other Federal taxes payable on the merchandise concerned because of its importation, plus any Federal excise tax on, or measured by the value of, such merchandise for which sellers in the United States are ordinarily liable; and
>
> (4) *Value of further processing.*—The value added by the processing of the merchandise after importation, provided sufficient information exists concerning the cost of processing. The price determined for deductive value is reduced by the value of further processing, only if the third unit price is used as deductive value (i.e., the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation, but is sold before the 180th day after the date of importation).

Computed value.—The last basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered. This value is also the one the importer can select at entry summary to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

> (a) Materials, fabrication, and other processing used in producing the imported merchandise;
>
> (b) Profit and general expenses;

(c) Any assist, if not included in (a) and (b); and

(d) Packing costs.

The cost or value of the materials, fabrication, and other processing of any kind used in producing the imported merchandise is based (1) on information provided by or on behalf of the producer and (2) on the commercial accounts of the producer, if the accounts are consistent with generally accepted accounting principles applied in the country of production of the goods.

The producer's profit and general expenses are used, provided they are consistent with the usual profit and general expenses reflected by producers in the country of exportation in sales of merchandise of the same class or kind as the imported merchandise.

If the value of an assist used in producing the merchandise is not included as part of the producer's materials, fabrication, other processing or general expenses, then the prorated value of the assist will be included in computed value. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States is included in computed value only to the extent that such value has been charged to the producer.

Finally, the cost of all containers and coverings of whatever nature and of packing, whether for labor or material, used in placing merchandise in condition, packed ready for shipment to the United States is included in computed value.

As can be seen, computed value relies to a certain extent on information that has to be obtained outside the United States, that is, from the producer of the merchandise. If a foreign producer refuses to or is legally constrained from providing the computed value information, or if the importer cannot provide such information within a reasonable period of time, then computed value cannot be determined.

Other.—If none of the previous five values can be used to appraise the imported merchandise, then the customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Only data available in the United States will be used.

Some examples of how the other methods can be reasonably adjusted are:

Identical Merchandise (or Similar Merchandise):

(a) The requirement that the identical merchandise (or similar merchandise) should be exported at or about the same time as the merchandise being appraised could be flexibily interpreted.

(b) Identical imported merchandise (or similar imported merchandise) produced in a country other than the country of exportation of the merchandise being appraised could be the basis for customs valuation.

(c) Customs values of identical imported merchandise (or similar imported merchandise) already determined on the basis of deductive value and computed value could be used.

Deductive method.—The 90-day requirement could be administered flexibly.

Customs Users Fees

Prior to the Ninety-Ninth Congress, the U.S. Customs Service did not have the general legal authority to collect fees for the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in or departing from the United States. They did, however, have authority to charge fees under certain limited circumstances, such as when they provided services (such as preclearance of passengers and private aircraft) which were of special benefit to a particular individual. They also had the authority to assess fees on operators of bonded warehouses and foreign trade zones and on the entry of vessels into ports and were authorized to receive reimbursement from carriers for overtime for services provided during nonbusiness hours and reimbursement from local authorities for services provided to certain small airports.

The Consolidated Omnibus Budget Reconciliation Act of 1985 [29] in section 13031, established a schedule of fees for Custom's costs of processing the arrival of commercial vessels, trucks and railroad cars, private aircraft and boats, passengers arriving on commercial vessels or aircraft from countries other than Mexico, Canada, U.S. insular possessions and other adjacent islands and for the processing of dutiable mail entries prepared by a customs officer and the issuance of customs brokers permits. The Act did not, however, provide for user fees on the general processing of commercial entries. Such fees became effective 90 days after enactment of the legislation.

A number of technical modifications were made to these fees in the Tax Reform Act of 1986.[30] Among the changes included in the Tax Act was the placement of an annual cap on the arrival of commercial vessels, the establishment of a lower vessel fee for certain barges and bulk carriers, and an increase in the fee for rail cars carrying passengers or freight from $5 to $7.50, coupled with the elimination of the fee on empty railroad cars.

The customs users fee schedule was further expanded to cover the costs of processing commercial entries with the enactment of legislation "Providing for Reconciliation Pursuant to Section 2 of the Concurrent Resolution on the Budget for Fiscal Year 1987".[31] Under this Act, which further amended section 13031 of the Consolidated Budget Reconciliation Act of 1985, beginning on December 1, 1986, an ad valorem user fee is applied to all formal entries of merchandise imported for consumption, including warehouse withdrawals for consumption. These fees are in addition to the vehicle and passenger fees set forth in section 13031(a) of the 1985 Act.

As amended by the Omnibus Budget Reconciliation Act of 1987 [32] and the Technical and Miscellaneous Revenue Act of 1988,[33] the provision specifically excludes applicability of such user fees to the U.S. portion of the value of articles classifiable under items 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule or to products of the least developed developing countries (LDDC's), products of eligible countries under the Caribbean Basin Initiative (CBI), and products of U.S. insular possessions. Further, pursuant to section 203 of the United States-Canada Free-Trade Agreement Implementation Act of 1988,[34] the merchandise user fees will be phased out with respect to articles of Canadian origin in accordance with article 403 of the bilateral agreement.

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[29] P.L. 99-272, April 7, 1986.

[30] P.L. 99-514, October 22, 1986.

[31] P.L. 99-509, October 21, 1986.

[32] P.L. 100-203, section 9501, December 22, 1987.

[33] P.L. 100-647, section 9001, November 10, 1988.

From December 1, 1986, through the end of fiscal year 1987, a user fee of 0.22 percent ad valorem was applied, based on the appraised customs value of the imported merchandise. Beginning with fiscal year 1988 and continuing through fiscal year 1989, the fee was set at 0.17 percent ad valorem. For fiscal year 1988 and beyond, a special formula is provided to allow reduction of the fee so that the amount of money collected will continue to closely approximate the amount appropriated for Customs' commercial operations. The legislative authority to impose all customs user fees, including those previously enacted, expires on September 30, 1990.

During the effective period of the custom user fees, Customs is precluded from assessing charges for cargo inspection or clearance services or any other customs service performed or personnel provided in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, its passengers, crew, and cargo, including those performed outside of normal business hours on an overtime basis and those performed outside of the United States except for those fees authorized under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended. Customs is further precluded from collecting additional fees in connection with the operation of foreign trade zones or customs bonded warehouses.

In the case of small airports and other facilities where the cost of customs services is already borne by the users of such facilities, the Secretary of the Treasury is authorized to impose a lower user fee than would be applicable otherwise.

The Customs Service collects these fees through usual entry procedures, employing its existing standard consumption entry form (CF 7501). No new recordkeeping or data collection burdens are imposed on the public.

The proceeds of these fees are deposited in a dedicated account known as the "Customs User Fee Account" within the general fund of the Treasury. Subject to authorization and appropriation, the funds are available to the Customs Service to cover that agency's cost of commercial services rendered. All fees collected must be deposited as offsetting receipts into this account except those fees required for the direct reimbursement of appropriations. The statute provides that if the account has a surplus of funds, the Secretary of the Treasury is prohibited from reducing staffing levels for providing commercial clearance and preclearance services.

The Secretary of the Treasury must submit a user fee report each even-numbered fiscal year to the House Committee on Ways and Means and the Senate Committee on Finance as to whether the fees should be adjusted so that the User Fee Account balance approximates a zero balance. Among other items, the implementing regulations are required to prescribe that the work shifts of customs personnel at airports will not be arbitrarily reduced.

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[34] Public Law 100-449, September 28, 1988.

In February, 1988 the GATT adopted a panel finding that the present ad valorem structure of the customs user fee to fund the costs of processing commercial merchandise entries is inconsistent with U.S. GATT obligations to the extent the fee exceeds the approximate cost of customs processing for the individual entry and includes costs for Customs Service activities that are not services to the particular importer (e.g., costs of processing imports exempt from the fee). Legislative options to remedy this situation are currently being examined.

Other Customs Laws

COUNTRY-OF-ORIGIN MARKING

Section 304 of the Tariff Act of 1930, as amended,[35] provides that, with certain exceptions, every imported article of foreign origin (or its container in specified circumstances) "shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article." The purpose of this provision is to permit the "ultimate purchaser" in the United States to choose between domestic and foreign-made products, or between the products of different foreign countries.

When imported articles ordinarily reach their ultimate purchasers in packaged form, the containers or holders must, as a general rule, be marked with the country of origin of their contents, whether or not the article themselves are required to be marked.

Exceptions.—The statute gives the Secretary of the Treasury the authority to allow exceptions to the marking requirement under prescribed circumstances. For example, certain classes of merchandise are excepted from the country of origin marking requirements because they are not physically susceptible to marking or can only be marked at the cost of injury to the article.

Marking requirements may also be waived as to articles which arrive at the United States border unmarked, if the expense of marking under Customs supervision would be economically prohibitive and the Customs Service is satisfied that the importer or shipper did not fail to mark the merchandise before shipment to the United States for the purpose of invoking this exception and thereby avoiding the marking requirements.

Another exception to the marking requirement may be granted for articles as to which the ultimate purchaser necessarily knows the country of origin. An exception is also provided for articles to be processed by the importer for resale if the processing would necessarily obliterate or conceal any marking. If the processing undertaken by the importer is sufficient to convert the imported article into a new and different article of trade, any subsequent purchaser is not an ultimate purchaser of the imported article.

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[35] 19 U.S.C. 1304.

Other classes of excepted merchandise include products of American fisheries, products of U.S. possessions, products of U.S. origin which have been exported and returned, and articles entered for immediate transshipment and exportation from the United States. In addition, articles qualifying for duty-free treatment as being $1 or less in value, or as bona fide gifts less than $10 in value each, are relieved of the marking requirements, as are articles produced more than 20 years prior to importation.

Finally, under 19 U.S.C. 1304(a)(3)(J), classes of articles named in certain notices published by the Secretary of the Treasury in the late 1930's are not subject to the marking requirements. The articles named in such notices were those which had been imported in substantial quantities during the 5-year period ending December 31, 1936, and which had not been required to bear country of origin markings during that period. Such excepted articles are now found in the so-called "J-List." [36]

Marking of certain pipe and fittings.—A recent amendment to section 304 of the Tariff Act of 1930 contained in section 207 of the Trade and Tariff Act of 1984 provides that no exceptions may be made to the country of origin marking requirement for imported pipe, pipe fittings, compressed gas cylinders, manhole rings or frames, covers and assemblies thereof and specifies the type of marking which is acceptable for those products.

Marking of containers of imported mushrooms.—Section 1907(b) of the Omnibus Trade and Competitiveness Act of 1988 specifies that markings on imported preserved mushrooms must indicate in English the countries in which the mushrooms were grown.

Marking of native American style jewelry and arts and crafts.—Section 1907(c) of the Omnibus Act provides that, within one year, the Secretary of the Treasury is to prescribe and implement regulations which require that all imported Native-American style jewelry and Native-American style arts and crafts have the English name of the country of origin indelibly and permanently marked in a conspicuous place on such products.

Penalty for failure to mark.—Imported goods that are not properly marked are liable for a 10 percent ad valorem duty in addition to any other duty that might be applicable.

However, the payment of the 10 percent marking duty does not discharge the importer's obligation to comply.[37]

Imported articles or their containers that are found to be improperly marked are generally retained in Customs custody until such time as the importer, after notification, arranges for their exportation, destruction, or proper marking under Customs supervision, or until they are deemed abandoned to the Government. If such unmarked articles are part of a shipment the balance of which has previously been released from Customs custody, the importer will be notified and ordered to redeliver the released articles to Customs for marking, exportation, or destruction under Customs supervision.

Section 304(h) of the Tariff Act (19 U.S.C. 1304) provided for a maximum fine of $5,000, or imprisonment of not more than one year upon conviction for any person who "with intent to conceal" alters or removes the country of origin marking. Section 1907(a) of the Omnibus Act increases the maximum fine for intentional alteration or removal of country of origin markings to $100,000 on the first offense and $250,000 for subsequent offenses.

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[36] 19 CFR 134.33.

[37] *Globemaster, Inc.* v. *United States*, 68 Cust. Ct. C.D. 4340, 340 F. Supp. 974 (1972).

DRAWBACK

Under 19 U.S.C. 1313(a) "drawback" is payable upon the exportation of an article manufactured or produced in the United States with the use of duty-paid imported merchandise. To receive benefit of drawback, the completed article must have been exported within 5 years from the date of importation of the pertinent duty-paid merchandise. The amount of refund is equal to 99 percent of the duties attributable to the foreign, duty-paid content of the exported article.

The purpose of 19 U.S.C. 1313(a) is to permit American-made products to compete more effectively in world markets. It enables domestic manufacturers and producers to select the most advantageous sources for their raw materials and component requirements without regard to duties, thereby permitting savings in their production costs. It also encourages domestic production and, as a result, the utilization of American labor and capital.

The procedural and other requirements governing drawbacks are set forth in 19 CFR Part 22.

An important feature of 19 U.S.C. 1313(a) and a number of other drawback provisions is the allowance of drawback on a substitution basis. Pursuant to 19 U.S.C. 1313(b), an exported article incorporating components entirely of domestic origin can nevertheless qualify for drawback, to the extent that duty has been paid on the importation of components of the same kind and quality as those used in the manufacture or production of the exported article.

Section 202 of the Trade and Tariff Act of 1984 expanded the application of current drawback provisions in three important respects. First, it allows drawback if the same person requesting drawback, subsequent to importation and within 3 years of importation of the merchandise, exports from the United States or destroys under Customs supervision fungible merchandise (whether imported or domestic) which is commercially identical to the merchandise imported.

Second, it allows drawback for all packaging materials imported for packaging or repackaging imported merchandise.

Finally, the act provides that any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise for drawback purposes if no certificate of delivery is issued for such imported merchandise.

In addition to 19 U.S.C. 1313(a), there are a variety of other specific drawback provisions allowing for the refund of duties and/or internal revenue taxes under specified circumstances for the exportation of products such as flavoring extracts, toiletries, distilled spirits, salts, and cured meats. Further, under 19 U.S.C 1313(c) drawback is allowable when merchandise is rejected by the importer because it fails to conform to the sample upon which the purchase order was made, or because it fails to conform to the importer's specifications, or because the merchandise was shipped without the consignee's consent. When such rejected merchandise is exported under Customs supervision, 99 percent of the duties paid will be refunded upon compliance with the pertinent regulations.

Section 204 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 [38] brings U.S. domestic law into compliance with the obligations under Article 404 of the Free Trade Agreement (FTA) to end duty drawback on exports between the United States and Canada as of January 1, 1994, with limited exceptions. Exceptions under Article 404 continue drawback for goods exported in essentially the same condition on exportation as on importation and dutiable goods originating in either Party incorporated or directly consumed in the production of goods subsequently exported to the other Party. Section 204(b) authorizes the President to proclaim those citrus and apparel products (specified in the Statement of Administrative Action) on which drawback would also be maintained. The President may also proclaim, subject to the consultation/lay-over requirements of section 103(a) of the Act, the exemption agreed to with Canada of any additional goods, or a delay beyond January 1, 1994, agreed to with Canada on the drawback prohibition with respect to any goods, as provided under Article 404. All these various exceptions are defined as "drawback eligible goods" under section 204(a) of the implementing Act. In no case may drawback be paid with respect to countervailing or antidumping duties.

COPYRIGHTS AND TRADEMARK ENFORCEMENT

Copyrights.—Section 602(a) of the Copyright Revision Act of 1976 [39] provides that the importation into the United States of copies of a work acquired outside the United States without authorization of the copyright owner is an infringement of the copyright and are subject to seizure and forfeiture. Forfeited articles are generally destroyed; however, the articles may be returned to the country of export whenever Customs is satisfied that there was no intentional violation. Copyright owners seeking import protection from the U.S. Customs Service must register their claim to copyright with the U.S. Copyright Office and record their registration with Customs in accordance with applicable regulations.[40]

Trademarks and trade names.—Articles bearing counterfeit trademarks, or marks which copy or simulate a registered trademark registration of a United States or foreign corporation are prohibited importation, provided a copy of the U.S. trademark registration is filed with the Commissioner of Customs and recorded in the manner provided by regulations.[41] The U.S. Customs Service also affords similar protection against unauthorized shipments bearing trade names which are recorded with Customs pursuant to regulations.[42] It is also unlawful to import articles bearing genuine trademarks owned by a U.S. citizen or corporation without permission of the U.S. trademark owner, if the foreign and domestic trademark owners are not parent and subsidiary companies or otherwise under common ownership and control, provided the trademark has been recorded with Customs and the U.S. trademark owner has not authorized the distribution of trademarked articles abroad.

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[38] P.L. 100-449.

[39] Public Law 94-553, sec. 101, approved October 19, 1976, 17 U.S.C. 602(a).

[40] 19 CFR 133, Subpart D.

[41] 19 CFR 133.1-133.7.

[42] 19 CFR Part 133, Subpart B.

The Customs Reform and Simplification Act of 1978[43] strengthened the protection afforded trademark owners against the importation of articles bearing a counterfeit mark. A "counterfeit trademark" is defined as a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark. Articles bearing a counterfeit trademark which are seized by Customs and forfeited to the government may be (1) given to any Federal, state, or local government agency which has established a need for the article; (2) given to a charitable institution; or (3) sold at public auction if more than 1 year has passed since forfeiture and no eligible organization has established a need for the article. The law also provides an exemption from trademark restrictions for certain articles accompanying a person arriving in the United States when the articles are for personal use and not for sale.

PENALTIES

Section 592 of the Tariff Act of 1930, as amended,[44] is the basic and most widely used Customs penalty provision. It prescribes monetary penalties against any person who imports, attempts to import, or aids or procures the importation of merchandise by means of false or fraudulent documents, statements, omissions or practices, concerning any material fact. The statute may be applied even though there is no loss of revenue involved.

Section 592 infractions are divided into three categories of culpability, each giving rise to a different maximum penalty, as follows:

(1) *Fraud.*—This category involves an act of commission or omission intentionally done for the prupose of defrauding the United States of revenue, or otherwise violating section 592. The maximum civil penalty for a fraudulent violation is the domestic value of the merchandise in the entry or entries concerned.

(2) *Gross negligence.*—This category involves an act of commission or omission with actual knowledge of, or wanton disregard for, the relevant facts and a disregard of section 592 obligations,whereby the United States is or may be deprived of revenue, or where section 592 is otherwise violated. The maximum civil penalty for gross negligence is the lesser of the domestic value of the merchandise or four times the loss of revenue (actual or potential). If the infraction does not affect the revenue, the maximum penalty is 40 percent of the dutiable value of the goods.

(3) *Negligence.*—This category involves a failure to exercise due care in ascertaining the material facts or in ascertaining

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[43] Public Law 95-410, approved October 3, 1978, 92 Stat. 888.

[44] 19 U.S.C. 1592.

the obligations under section 592. The maximum civil penalty for negligence is the lesser of the domestic value of the merchandise or twice the loss of revenue (actual or potential). However, where there is no loss-of-revenue issue, the penalty cannot exceed 20 percent of the dutiable value.

In addition to the civil penalties described above, a criminal fraud statute provides for sanctions to those presenting false information to customs officers. Title 18, United States Code, section 542, provides a maximum of 2 years imprisonment, or a $5,000 fine, or both, for each violation involving an importation or attempted importation.

The Secretary of the Treasury is authorized to seize merchandise if there is resasonable cause to believe that a person has violated these provisions and the alleged violator is insolvent; outside the jurisdiction of the United States; is otherwise essential to protect the revenue; or to prevent the importation of prohibited merchandise into the United States.

For proceedings commenced by the United States in the Court of International Trade for monetary penalties, all issues shall be tried *de novo*. The statute specifies the standard of proof required to establish a violation. In fraud cases, the United States has the burden to prove the violation by clear and convincing evidence; in gross negligence cases, the government has the burden to establish all the elements of the alleged violation; and for negligence cases, the government has the burden to establish the act or omission and the defendant has the burden of proof that the act or omission did not occur as a result of negligence.

COMMERCIAL OPERATIONS

Advisory Committee.—Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) established in the Department of Treasury the "Advisory Committee on Commercial Operations of the United States Customs Service." The Assistant Secretary of Treasury for Enforcement is the Committee Chairman, which is composed of 20 members.

In making appointments, the Secretary is to select individuals or firms "affected by the commercial operations" of the Customs Service. A majority of the members may not belong to the same political party. The Advisory Committee is required to provide advice to the Secretary on all Customs commercial operation matters and to report annually to the House Ways and Means and Senate Finance Committees.

Section 9501(c) of the Omnibus Budget Reconciliation Act also provides for a GAO study of the centralized cargo examination station (CES) concept from the perspective of both the Customs Service and the business community. The Act prohibits the establishment of any new CES stations unless Customs provides written notice to both the House Ways and Means and Senate Finance Committees not less than 90 days prior to the proposed establishment. Further, the Customs Service is directed to discontinue operations of CES sites used for air cargo operations until the study is complete. However, staffing levels are to be maintained.

Initiated on January 5, 1987, through Customs Directive 3270-03, the CES program provides for centralized examination of cargo at border stations, ocean ports, and airport facilities. Rather than having inspectors perform this examination at the point where the goods transit, the plan calls for diversion to a centralized warehouse location where they are devanned, inspected, restuffed, and returned to their previous route. Previously, inspectors were located on the premises of a common carrier or devanning station, or in some instances where available at the importer's warehouse on a reimbursed basis.

Notification of consolidation.—The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) amended the Customs Procedural Reform and Simplification Act of 1978 to require the Commissioner of Customs to notify the House Ways and Means and Senate Finance Committees at least 180 days prior to taking any action which would: (a) result in any significant reduction in force of employees by means of attrition; (b) result in any reduction in hours of operation or services rendered at any custom office; (c) eliminate or relocate any customs office; (d) eliminate any port, or significantly reduce the number of employees assigned to any Customs office or any port of entry.

Foreign Trade Zones

The Foreign Trade Zones Act of 1934,[45] as amended, authorizes the establishment of foreign trade zones. A foreign trade zone (FTZ) is a special enclosed area within or adjacent to ports of entry, usually located at industrial parks or in terminal warehouse facilities. Although operated under the supervision and enforcement of the Customs Service, they are considered outside the customs territory of the United States for purposes of customs entry procedures. With certain exceptions, any foreign or domestic merchandise may be brought into a foreign trade zone for storage, sale, exhibition, breaking up, repacking, distribution, mixing with foreign or domestic merchandise, assembly, manufacturing, or other processing. Foreign merchandise imported into an FTZ is not subject to duty, formal entry procedures or quotas unless and until it is subsequently imported into U.S. customs territory.

The framework that governs the establishment and operation of FTZs has three principal components. First, the Foreign-Trade Zones Act of 1934 (the Act) authorizes the establishment of FTZs and, as amended in 1950, allows manufacturing in FTZs.[46] Second, regulations, promulgated by both the Customs Service[47] and the Department of Commerce,[48] expand on the Act. A 1952 amendment to the regulations provided for the establishment of "subzones" in addition to general purpose zones. Third, the decision in *Armco Steel Corp.* v. *Stans* in 1970 validated the use of zone manufacturing to avoid customs duties and interpreted several key provisions of the Act.[49]

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[45] Act of June 18, 1934, ch. 590, 48 Stat. 998, 19 U.S.C. 81a-81u.

[46] Boggs amendment of 1959, ch. 296, 64 Stat. 246, 19 U.S.C. 81c.

[47] 19 CFR 146.0-48 (1980).

[48] 15 CFR 400.100-1406 (1980).

[49] 431 F.2d 779 (2d Cir. 1970), aff'g 303 F. Supp. 262 (S.D.N.Y. 1969).

Although legislation providing for foreign trade zones had been introduced as early as 1894, the first such statute was not enacted until 1934. Hearings on foreign-trade zone bills were held in 1934 by both the House and Senate.[50] The Committee on Ways and Means reported a bill with amendments [51] which passed the House May 9, 1934. The Senate debated, amended, and passed legislation inserting the text of its own bill. Following a conference, the Foreign Trade Zone Act was approved June 18, 1934.

The original purpose of the Act was to expedite and encourage foreign commerce. Initially, FTZs were little more than transshipment or consignment centers for the storage, repackaging, or light processing of foreign goods pending re-exportation. The 1934 Act prohibited the manufacture and exhibition of goods in FTZs. In 1950, however, Congress removed this prohibition by passing the so-called Boggs amendment (named after Mr. Boggs of Louisiana). The amendment added manufacturing to the list of activities permitted and authorized exhibition in zones.

The amendment to the FTZ regulations in 1952 that provided for the establishment of subzones is important to manufacturing and assembly operations in zones. The essential distinction between the two types of zones is that individual subzones are generally used by only one firm, whereas there is no limitation on the number of firms that can operate in a general-purpose zone. Subzones were established to assist companies which were unable to relocate to or take advantage of an existing general-purpose zone.[52] Under the regulations, only a grantee of a previously approved general zone may apply to establish a subzone.

Authority for establishing these facilities is granted to qualified corporations, or political subdivisions, who must submit applications to the Department of Commerce's Foreign Trade Zones Board, comprised of the Secretary of Commerce (Chair), the Secretary of the Treasury, and the Secretary of the Army.[53] The Board's regulations set forth the basic requirements for applying and qualifying for a FTZ. The statute provides that every officially designated port of entry is entitled to at least one FTZ. Public hearings are often held by the Board staff in the locale involved. While most applications are noncontroversial, occasionally domestic industries or labor that are sensitive to imports will oppose a subzone application. The sharp growth of manufacturing in subzones, particularly by the automobile industry, has led to increased criticism of the practice by U.S. parts producers, who are concerned that the practice may reduce their effective tariff protection.

Section 3, which contains the basic substantive provisions of the Act, allows merchandise to be imported into FTZs without being subject to U.S. customs laws. The section regulates the tariff treatment of FTZ merchandise according to its status as foreign or domestic, and as privileged or nonprivileged.

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[50] Foreign Trade Zones: Hearings on H.R. 3657 Before a Subcomm. of the House Comm. on Ways and Means. 73d Cong., 2d Sess. (1934); Foreign Trade Zones: Hearings on S. 1319 and S. 2001 Before a Subcomm. of the Senate Comm. on Commerce, 73d Cong., 2d Sess. (1934).

[51] House Report 1521.

[52] 15 CFR 400.304 (1983).

[53] 19 U.S.C. § 81a(b) (1976). The jurisdiction and authority of the Board are set forth in 15 CFR 400.200–203 (1980).

One may apply for privileged status for foreign merchandise in an FTZ that has not yet been manipulated or manufactured so as to effect a change in its tariff classification. Foreign merchandise that is not privileged, recovered waste, and merchandise that was originally domestic but can no longer be identified as such are deemed to be nonprivileged foreign merchandise. Domestic merchandise that would otherwise have been eligible for privileged status but for which no application was made is nonprivileged merchandise.

The status of merchandise becomes signficant when it enters U.S. customs territory. Customs appraises and classifies privileged foreign merchandise to determine the taxes and duties owed according to the condition of the merchandise when it enters a FTZ. The importer pays the previously determined taxes and duties when bringing the merchandise into U.S. customs territory regardless of any manufacturing or manipulation of the goods with other foreign or domestic privileged merchandise.

In contrast, merchandise that is composed entirely of or derived entirely from nonprivileged merchandise, either foreign or domestic, or of a combination of privileged and nonprivileged merchandise, is appraised and classified according to its condition when constructively transferred into U.S. customs territory. Thus, the duty and taxes payable on nonprivileged or combined merchandise are those applicable to its classification and value when it enters U.S. customs territory and not when it enters the zone. This distinction is an important potential advantage of zone-based operations.

According to the General Accounting Office (GAO) and the U.S. International Trade Commission (ITC), the number of zones and the dollar value of their business activities have increased dramatically in recent years. FTZs grew from only 7 general purpose zones and 3 subzones in 1970 to 138 general purpose zones and 101 subzones by 1987.[54] GAO and the ITC attributed the increase in part to a 1980 Treasury ruling holding that the dutiable value of finished products processed in the zone would be only the value attributable to the foreign components used and not the value added.

Finally, because section 3 of the Act allows an importer to elect to pay duty on either components and raw materials or on the completed article, the importer may reduce his tariff liability by manufacturing or assembling higher duty components into a lower duty product. This so-called inverted tariff, which is commonly characteristic of high technology merchandise, is also responsible for the recent growth in zone-based manufacturing and assembly of high value products, such as machinery, transportation equipment, electronics and chemicals.

There have been two recent statutory changes affecting foreign trade zones. First of all, the United States-Canada Free-Trade Agreement Implementation Act [55] amended, section 3(a) of the Foreign Zones Act to implement the obligations under Article 404 that, with the exception of "drawback eligible goods," goods withdrawn from a foreign trade zone shall be subject to duty on exportation to Canada as of January 1, 1994 (or a later date agreed to with Canada and proclaimed by the President subject to the consultation/lay-over requirements), to the same extent as if the product were destined for consumption in the United States.

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[54] Report to the Chairman, Committee on Ways and Means by the U.S. General Accounting Office, GAO/NSIAD-89-85, February 7, 1989; and Report to the Committee on Ways and Means, U.S. House of Representatives, on Investigation No. 332-248 under section 332(g) of the Tariff Act of 1930, USITC Publication 2059, February 1988.

[55] Public Law 100-449, September 28, 1988.

Secondly, an amendment to section 3 with respect to the calculating of relative taboos in the operations of petroleum refineries in a foreign trade zone was enacted in section 9002 of the Technical and Miscellaneous Revenue Act of 1988.[56]

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[56] Public Law 100-647, Nov. 10, 1988.

Chapter 2: TRADE REMEDY LAWS

Countervailing Duty (CVD) Law

The Tariff Act of 1930, as amended, provides for the imposition of additional duties whenever a subsidy is bestowed by a foreign country upon the manufacture or production for export of any article which is subsequently imported into the United States. There are currently two separate provisions of the Tariff Act which govern the imposition of countervailing duties. Subtitle A of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 and amended by the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988,[1] applies to imports from countries which are signatories to the GATT Agreement Relating to Subsidies and Countervailing Measures,[2] commonly referred to as the Subsidies Code, or which have assumed obligations sustantially equivalent to those of the Code. For imports from these countries, an injury test is required prior to imposition of countervailing duties. Imports from countries which have not signed the Subsidies Code or assumed substantially equivalent obligations are subject to the provisions of section 303 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979,[3] and are generally not afforded an injury test in countervailing duty cases. Other than the requirement of an injury test, however, the provisions of the countervailing duty law under the two separate sections are generally the same.

The purpose of the countervailing duty law is to offset any unfair competitive advantage that foreign manufacturers or exporters might enjoy over U.S. producers as a result of foreign subsidies. Countervailing duties equal to the net amount of the subsidies are imposed upon importation of the subsidized goods into the United States.

BACKGROUND

The first U.S. statute dealing with unfair trade practices was a countervailing duty law passed in 1897. The provisions of the 1897 statute remained substantially the same until 1979, when the U.S. countervailing duty law was changed to conform with the agreement reached in the Tokyo Round of Multilateral Trade Negotiations.

The law prior to 1979 required the Secretary of the Treasury to assess countervailing duties on imported dutiable merchandise benefiting from the payment or bestowal of a "bounty or grant." The

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[1] 19 U.S.C. 1671.

[2] Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures), MTN/NTM/W/236, reprinted in House Doc. No. 98-153, pt. I at 257.

[3] 19 U.S.C. 1303.

1897 law authorized countervailing duties against any bounty or grant on exportation of foreign articles; in 1922 Congress amended the provision to cover bounties or grants on manufacture or production as well as on exportation. The amount of the countervailing duty was to equal the net amount of the "bounty or grant." Prior to the amendments made by the Trade Act of 1974 the law applied only to dutiable merchandise and afforded no injury test.

Article VI of the GATT, governing the imposition of countervailing measures by GATT signatories, requires evidence of injury prior to imposition of countervailing duties. The grandfather clause of the GATT, however, allowed the U.S. law to operate without an injury test since the U.S. law predated the GATT.

Although the substantive requirements of the countervailing duty law remained virtually the same, the Trade Act of 1974 made two important changes to the CVD law. First, it extended the application of the countervailing duty law for the first time to duty-free imports, subject to a finding of injury as required by the international obligations of the United States (i.e., duty-free imports from GATT members). Second, it made extensive changes in many procedural aspects of the law, which had the effect of limiting executive branch discretion in administering the CVD statute. The responsibilities for countervailing duty investigations were also split with the Department of Treasury being responsible for subsidy determinations and the International Trade Commission being responsible for injury determinations.

GATT Subsidies Code

During the Tokyo Round of Multilateral Trade Negotiations, a multilateral agreement governing the use of subsidies and countervailing measures was concluded and signed by the United States. In order to enforce obligations with regard to the use of subsidies, the agreement provides for improved international procedures for notification, consultation and dispute settlement and, where a breach of an obligation concerning the use of subsidies is found to exist, or a right to relief exists, countermeasures are contemplated. In addition to the availability of countermeasures through the dispute settlement process, countries could also take traditional countervailing duty action to offset subsidies upon a showing of material injury to a domestic industry. The agreement sets out criteria for material injury determinations.

The key provisions of the agreement are as follows:

1. Flat prohibition of export subsidies on non-primary products as well as primary mineral products.
2. A description of export subsidies which supersedes the existing requirement that an export subsidy must result in export prices lower than prices for domestic sales, and includes an updated illustrative list of subsidy practices.
3. With respect to domestic subsidies, for the first time in an international agreement, explicit recognition that while they are often used to promote important objectives of national policy, they can also have harmful trade effects; relief (including countermeasures) is permissible where such subsidies (a) injure domestic producers; and (b) nullify or impair benefits of concessions under the

GATT (including tariff bindings); or (c) cause serious prejudice to the interests of other signatories.

4. Recognition that where domestic subsidies are granted on noncommercial terms, trade distortions are especially likely to arise; commitment by signatories to "take into account" conditions of world trade and production (e.g., prices, capacity, etc.) in fashioning their subsidy practices.

5. Improved discipline on use of export subsidies for agriculture. Prohibition on such subsidies when used in a manner which (a) displaces the exports of others or (b) involves material price undercutting in a particular market.

6. Provision for special and differential treatment under which developing countries could not use export subsidies where such subsidies adversely affect the trade or production interests of other countries; provision for negotiated phase-outs of export subsidies by developing countries.

7. Tight dispute settlement process.

8. Greater transparency regarding subsidy practices (including provision for notification to the GATT of practices of other countries).

9. For countervailing duty actions, an injury and causation test designed to afford relief where subsidized imports (whether an export or domestic subsidy is involved) impact on U.S. producers either through volume or through effect on prices.

10. Greater transparency in the administration of countervailing duty laws and regulations.

Application of GATT Subsidies Code to U.S. law

Congress approved the GATT Subsidies Code under section 2(a) of the Trade Agreements Act of 1979. Section 101 of the 1979 Act added a new title VII to the Tariff Act of 1930, containing the new provisions of the countervailing duty law to conform to U.S. obligations under the Subsidies Code. One of the most fundamental changes made by the 1979 Act is the requirement of an injury test in all CVD cases involving imports from "countries under the Agreement"—countries which either are signatories to the Subsidies Code or have assumed substantially equivalent obligations to those under the Code. The "no injury test" provisions of the preexisting section 303 were generally retained, however, for cases involving imports from countries which are not "countries under the Agreement" (other than duty-free imports from GATT members). Other changes made by the 1979 Act include the grant of provisional relief for the first time, reduction of the time periods for investigation, and greater opportunities for participation by interested parties.

Subsequent changes to U.S. law

In 1979, under President Carter's Reorganization Plan No. 3, the responsibility for administering the subsidy portions of the countervailing duty statute was transferred from the Department of the Treasury to the Department of Commerce.[4]

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[4] Exec. Order No. 12188, January 4, 1980, 44 Fed. Reg. 69273.

In 1984, the Trade and Tariff Act of 1984 modified the application of the CVD law to "upstream subsidies"—subsidies bestowed on inputs which are then incorporated into the manufacture of a final product which is exported to the United States. The 1984 Act also made certain other clarifications and procedural changes to the law.

In 1988, the Omnibus Trade and Competitiveness Act clarified USTR's authority to revoke the injury test for countries which have not honored their obligations with respect to export subsidies. It also made certain procedural and definitional changes to the countervailing duty law, including an explicit grant of authority to prevent circumvention of countervailing duty orders.

BASIC PROVISIONS

Section 701 of the Tariff Act of 1930, as amended, [5] provides that a countervailing duty shall be imposed, in addition to any other duty, equal to the amount of net subsidy if two conditions are met. First, the Department of Commerce (DOC) must determine that a subsidy is being provided, directly or indirectly, "with respect to the manufacture, production, or exportation of a class or kind of merchandise imported into the United States" and must determine the amount of the net subsidy. Second, the International Trade Commission (ITC) must determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." The countervailing duty will apply whether the merchandise is imported directly or from third countries, and whether or not in the same condition as when exported.

Section 303 of the Tariff Act of 1930, as amended, applies to imports from countries which are not "countries under the Agreement." Under section 303 the second condition of an injury test is not required, except for cases involving duty-free imports from GATT members.

Net Subsidy

Countervailing duties are imposed in the amount of the net subsidy as determined by the DOC. Subsidies are direct and/or indirect grants for the production or exportation of goods. They can take many forms, including direct cash benefits, credits against taxes, and loans with artificially low interest rates.

Although the statute does not provide an explicit definition of the term "subsidy," it provides that the term shall mean the same as "bounty or grant" under section 303, and provides an illustrative list of subsidies. The list includes, but is not limited to, any export subsidy described in Annex A of the Subsidies Code, and certain specified domestic subsidies if provided to a specific enterprise or industry, or group of enterprises or industries. The DOC is required to examine whether benefits are in law and in fact provided to a specific enterprise or industry or group of enterprises or industries in determining whether a subsidy exists.

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[5] 19 U.S.C. 1671.

To determine the amount of net subsidy on which the CVD will be based, the DOC may subtract from gross subsidy the amount of:

(a) any application fee, deposit, or similar payment paid to qualify for or receive the subsidy;

(b) any loss in the subsidy value resulting from deferred receipt mandated by government order; and

(c) export taxes, duties, or other charges on exports to the United States specifically intended to offset the subsidy.

Section 613 of the Trade and Tariff Act of 1984 clarifies the scope of the countervailing duty law with respect to its application to upstream subsidies. An upstream subsidy is defined as any subsidy described in present law that:

(1) is paid or bestowed by a government with respect to an input used to manufacture or produce in that same country merchandise subject to a CVD proceeding;

(2) in the judgment of the DOC bestows a competitive benefit on that merchandise; and

(3) has a significant effect on the cost of manufacture or production of the merchandise.

With regard to the second criterion, the DOC shall decide that a competitive benefit has been bestowed when the price for the input used in manufacture or production of the merchandise subject to investigation is lower than the price the manufacturer or producer would otherwise pay for the input from another seller in an arms-length transaction. Whenever the DOC has reasonable grounds to believe or suspect an upstream subsidy is being paid or bestowed, the DOC must investigate whether it is in fact and, if so, include the amount of any competitive benefit, not to exceed the amount of upstream subsidy, in the amount of any CVD imposed on the merchandise under investigation.

The provision on upstream subsidies added by the 1984 Act does not affect the basic definition of subsidy in any way. The potential for an upstream subsidy exists only when a sector-specific benefit meeting all the other criteria of being a subsidy is provided to the input producer. The provision is also limited to subsidies paid or bestowed by the country in which the final product is manufactured. In 1988, a separate, special rule was added to the law with respect to calculating subsidies on certain processed agricultural products.

Material injury

Prior to issuance of a countervailing duty order under title VII, the ITC must determine that the domestic industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarted, by reason of subsidized imports. The standard of injury under the countervailing duty law, material injury, is the same standard as that under the antidumping law. Section 771(7) of the Tariff Act of 1930 defines "material injury" as harm which is not inconsequential or unimportant.

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury. The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of like merchandise, and the effects that U.S. imports have on U.S. producers of like products, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity. Also relevant are the effects on employment, inventories, wages, the ability to raise capital, and negative effects on the development and production activities of the U.S. industry. The ITC is required to cumulatively assess the volume and effect of like imports from two or more countries subject to investigation if the imports compete with each other and with like products of the domestic industry in the U.S. market. However, if imports from a country under investigation are negligible and have no discernable adverse impact on the U.S. industry, then the ITC may decide not to cumulate those imports with imports from the other countries. Furthermore, the ITC has discretion not to cumulate imports when the imports subject to investigation are products of Israel.

PROCEDURES FOR COUNTERVAILING DUTY INVESTIGATIONS

Initiation of investigation

Countervailing duty investigations may be self-initiated by the DOC or may be initiated as a result of a petition filed by an interested party. Petitions may be filed by any of the following, on behalf of the affected industry: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing; (5) a coalition or trade association representative of processors, or processor and growers, in cases involving processed agricultural products. The DOC is required to provide technical assistance to small businesses to enable them to prepare and file petitions under the CVD law. Petitions are to be filed simultaneously with both the DOC and ITC. Within 20 days after the filing of a petition, the DOC must decide whether or not the petition is legally sufficient to commence an investigation. If so, an investigation is initiated with respect to imports of a particular product from a particular country.

Preliminary ITC injury determination

Within 45 days of the date of filing of the petition, or of self-initiation, the ITC must determine whether there is a "reasonable indication" of material injury, based on the best information available to it at the time. The petitioner bears the burden of proof with respect to this issue. If the ITC preliminary determination is negative, the investigation is terminated. If it is positive, the investigation continues.

Preliminary DOC subsidy determination

Within 85 days after the petition is filed or the investigation is self-initiated, the DOC must determine whether there is a "reasonable basis to believe or suspect that a subsidy is being provided." In cases involving upstream subsidies, the time period may be extended to 250 days. This preliminary determination is based on best information available to it at the time. If affirmative, the preliminary determination must include an estimated amount of the net subsidy.

An expedited preliminary determination may be made based on information received during the first 50 days if such information is sufficient and the parties provide a written waiver of verification and an agreement to have an expedited preliminary determination. On the other hand, the preliminary determination may be postponed until 150 days after filing of petition or self-initiation, at the petitioner's request or in cases which DOC determines are extraordinarily complicated.

The effect of an affirmative preliminary determination is twofold: (1) the DOC must order the suspension of liquidation of all entries of foreign merchandise subject to the determination from the date of publication of the preliminary determination. The DOC must also order the posting of a cash deposit, bond, or other appropriate security for each subsequent entry of the merchandise equal to the estimated amount of the net subsidy; (2) the ITC must begin its final injury investigation, and the DOC must make all information available to the ITC which is relevant to an injury determination. If the preliminary determination is negative, no suspension of liquidation occurs, and the DOC investigation simply continues.

In cases involving "countries under the Agreement," if the petitioner alleges critical circumstances, the DOC must determine, on the basis of best information available at the time, whether (1) the alleged subsidy is inconsistent with the GATT Subsidies Code; and (2) there have been massive imports of the merchandise over a relatively short period. This "critical circumstances" determination can be made prior to the preliminary determination of subsidies. If the DOC determines critical circumstances exist, then any suspension of liquidation ordered shall retroactively apply to unliquidated entries of merchandise entered up to 90 days prior to the date suspension of liquidation was ordered.

Final DOC subsidy determination

Within 75 days after the date of its preliminary determination, the DOC must issue a final subsidy determination, unless the case involves upstream subsidies, in which case special extended time limits apply. If there are simultaneous investigations under the antidumping and countervailing duty laws involving imports of the same merchandise, the final CVD determination may be postponed until the date of the final determination in the antidumping investigation at the request of a petitioner.

If the final subsidy determination is negative, the investigation is terminated, including any suspension of liquidation which may be in effect, and all estimated countervailing duties are refunded and all appropriate bonds or other security are released. If the final determination is affirmative, the DOC orders the suspension of liquidation and posting of a cash deposit, bond, or other security (if such actions have not already been taken as a result of the preliminary determination), and awaits notice of the ITC final injury determination.

Final ITC injury determination

Within 129 days of a DOC affirmative preliminary determination or 45 days of a DOC affirmative final determination, whichever is longer, the ITC must make a final determination of material injury. If the DOC preliminary determination was negative, and the DOC final determination was affirmative, the ITC has until 75 days after the final affirmative determination to make its injury determination.

Termination or suspension of CVD investigations

Either the DOC or ITC may terminate a CVD investigation upon withdrawal of the petition by petitioner, or by the DOC if the investigation was self-initiated. The DOC may not, however, terminate an investigation on the basis of a quantitative restriction agreement limiting U.S. imports of the merchandise subject to investigation unless the DOC is satisfied that termination on the basis of such agreement is in the public interest.

The DOC may suspend a CVD investigation on the basis of one of three types of agreements entered into with the foreign government or with exporters who account for substantially all of the imports under investigation. The three types of agreements are: (1) an agreement to eliminate the subsidy completely or to offset completely the amount of the net subsidy within 6 months after suspension of the investigation; (2) an agreement to cease exports of the subsidized merchandise to the United States within 6 months of suspension of the investigation; (3) an agreement to eliminate completely the injurious effect of subsidized exports to the United States (which, unlike under the antidumping law, may be based on quantitative restrictions). The DOC may not, however, accept any such agreement unless it is satisfied that suspension of the investigation is in the public interest, and effective monitoring of the agreement is practicable.

Prior to actual suspension of an investigation, the DOC must provide notice of its intent to suspend and an opportunity for comment by interested parties. When the DOC decides to suspend the investigation, it must publish notice of the suspension, and issue an affirmative preliminary determination (unless previously issued). The ITC also suspends its investigation. Any suspension of liquidation ordered as a result of the affirmative preliminary determination, however, is to be terminated and all deposits of estimated countervailing duties or bonds posted are to be refunded or released.

If, within 20 days after notice of suspension is published, the DOC receives a request for continuation of the investigation from a domestic interested party or from the foreign government, then both the DOC and ITC must continue their investigations.

The DOC has responsibility for overseeing compliance with any suspension agreement. Intentional violations of suspension agreements are subject to civil penalties.

ASSESSMENT OF CVD DUTIES

Under title VII and in section 303 investigations requiring an injury test, both the DOC and ITC must issue affirmative final determinations in order for a CVD order to be issued. In section 303 investigations not requiring an injury determination, the CVD order is issued on the basis of an affirmative final DOC determination alone. Within 7 days of notice of an affirmative final ITC determination, the DOC must issue a countervailing duty order which (1) directs the Customs Service to assess countervailing duties equal to the amount of the net subsidy; (2) describes the merchandise to which the CVD applies; and (3) requires the deposit of estimated CVD's pending liquidation of entries, at the same time as estimated normal customs duties are deposited. Customs must assess countervailing duties within 6 months after the DOC receives satisfactory information on which to base the assessment, but no later than 12 months after the end of the annual accounting period within which the merchandise is imported or sold in the United States. The DOC must publish notice of its determination of net subsidy which shall be the basis for assessment of CVD's and for deposit of estimated CVD's on future entries.

Differences between estimated and final CVD's

If the cash deposit, bond, or other security for estimated countervailing duties pursuant to an affirmative preliminary determination is greater than the amount of CVD assessed pursuant to a CVD order, then the difference between the deposit and the amount of final CVD will be refunded for entries prior to notice of the final injury determination. If the cash deposit is lower than the final CVD under the CVD order, then the difference is disregarded. No interest accrues in either case.

If estimated countervailing duties deposited for entries pending liquidation are greater than the amount of final CVD's determined under a CVD order, then the difference will be refunded, together with interest on the amount of overpayment. If estimated CVD's are less than the amount of final CVD's then the difference will be collected together with interest.

ADMINISTRATIVE REVIEW

The DOC is required, upon request, to conduct an annual review of outstanding CVD orders and suspension agreements. For all entries of merchandise subject to the review, the DOC must review and determine the amount of any net subsidy. Such determination will provide the basis for assessment of CVD's on all entries subject to the review, and for deposits of estimated duties on entries subsequent to the period of review. The results of its annual review must be published together with a notice of any CVD to be assessed, estimated duty to be deposited, or investigation to be resumed. The DOC cannot, however, revoke a CVD order or terminate a suspended investigation on the basis of offsets.

A review of a final determination or of a suspension agreement shall be conducted by the DOC or ITC whenever it receives information or a request showing changed circumstances sufficient to warrant such review. Without good cause shown, however, no final determination or suspension agreement can be reviewed within 24 months of its notice.

ANTI-CIRCUMVENTION AUTHORITY

In 1988, specific authority was added to U.S. law to authorize the DOC to take action to prevent or address attempts to circumvent an outstanding countervailing duty order. The authority addresses four particular types of circumvention: assembly of merchandise in the United States, assembly of merchandise in a third country, minor alterations of merchandise, and later-developed merchandise. Under certain circumstances and after considering certain specified factors, DOC may extend the scope of the countervailing duty order to include parts and components (in cases involving U.S. assembly), third country merchandise (in cases involving third country assembly), altered merchandise, or later-developed merchandise.

JUDICIAL REVIEW

An interested party who is dissatisfied with a final determination under the countervailing duty law may file an action in the U.S. Court of International Trade for judicial review. To obtain judicial review of the administrative action, a summons and complaint must be filed concurrently within 30 days of publication of the final determination. The standard of review used by the Court is whether the determination is supported by "substantial evidence on the record, or otherwise not in accordance with law."

Judicial review of interlocutory decisions, previously permitted, was eliminated by section 623 of the Trade and Tariff Act of 1984. Decisions of the Court of International Trade are subject to appeal to the U.S. Court of Appeals for the Federal Circuit.

As a result of provisions in the U.S.-Canada Free Trade Agreement and its implementing legislation, final determinations in countervailing duty proceedings involving products of Canada are reviewed by a binational panel instead of by the U.S. Court of International Trade, if either the U.S. or Canadian Government so requests. The binational panel will apply only U.S. law and U.S. standards of judicial review to decide whether U.S. law was applied correctly.

Antidumping (AD) Law

Dumping generally refers to a form of international price discrimination, whereby goods are sold in one export market (such as the United States) at prices significantly lower than the prices at which comparable goods are sold in the home market of the exporter, or in its other export markets. Such pricing practices often are made possible when market barriers in the exporter's home market protect its higher home market price.

Three different provisions of U.S. law address different types of dumping practices. The Antidumping Act of 1916 provides for criminal and civil penalties for the sale of imported articles at a price substantially less than the actual market value or wholesale price, with the intent of destroying or injuring an industry in the United States. Title VII of the Tariff Act of 1930, as amended, provides for the assessment and collection of antidumping duties by the U.S. Government after an administrative determination that foreign merchandise is being sold in the U.S. market at less than fair value and that such imports are materially injuring the U.S. industry. Finally, section 1317 of the Omnibus Trade and Competitiveness Act of 1988 establishes procedures for the U.S. Trade Representative to request a foreign government to take action against third-country dumping that is injuring a U.S. industry.

HISTORICAL BACKGROUND

In 1916 the Congress enacted the Antidumping Act of 1916, providing a civil cause of action in Federal court for private damages as well as for criminal penalties against parties who dumped foreign merchandise in the United States.[6] The requirements under this statute, however, particularly the need to show evidence of intent, are difficult to meet, and the need for a different type of antidumping law was subsequently considered by Congress. In 1921 the Antidumping Act of 1921 was passed, which provided the statutory basis, until 1979, for an administrative investigation by the Department of the Treasury of alleged dumping practices and for imposition of antidumping duties.[7] In 1954, the administration of the antidumping law was split, and the function of determining injury was transferred from the Treasury Department to the U.S. Tariff Commission (now the International Trade Commission). The function of determining sales at less than fair value (LTFV) was left with the Treasury Department (until 1979).

During the post-World War II negotiations to establish an International Trade Organization, the United States proposed a draft article on dumping, based on the Antidumping Act of 1921. This draft became the basis for Article VI of the General Agreement on Tariffs and Trade (GATT), which is the international framework governing national antidumping laws.

During the 1960's, antidumping actions and their potential for abuse, rather than the dumping practice itself, became a source of great concern to many nations. As a result, during the Kennedy Round of Multilateral Trade Negotiations, the GATT Antidumping Code of 1967 was established. The 1967 Code had three main functions: (1) to clarify and elaborate on the broad concepts of Article VI of the GATT; (2) to supplement Article VI by establishing appropriate procedural requirements for antidumping investigations; and (3) to bring all GATT signatory countries into conformity with Article VI. The GATT Antidumping Code came into force on July 1, 1968, and provided for the establishment of a GATT Committee on Antidumping Practices, whose function was to review annually the operation of national antidumping laws.

During the Tokyo Round of Multilateral Trade Negotiations in the 1970's, the GATT Antidumping Code was amended to conform to the newly negotiated Agreement Relating to Subsidies and Countervailing Measures, also negotiated at that time and involving changes in Article VI of the GATT. The GATT Agreement on Implementation of Article VI of the GATT, Relating to Antidumping Measures came into force on January 1, 1980.[8]

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[6] Act of September 8, 1916, ch. 463, sec. 801, 39 Stat. 798, 15 U.S.C. 72.

[7] Act of May 27, 1921, ch. 14, 42 Stat. 11, 19 U.S.C. 160 (now repealed).

[8] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, MTN/NTM/W/232, reprinted in House Doc. No. 96-153, pt. I at 311.

The Congress approved the revised GATT Antidumping Code under section 2(a) of the Trade Agreements Act of 1979.[9] Title I of the 1979 Act repealed the Antidumping Act of 1921 and added a new title VII to the Tariff Act of 1930 implementing the provisions of the agreement in a new U.S. antidumping law. In addition to the substantive and procedural changes made by the 1979 Act, the responsibility for making dumping determinations was transferred from the Department of the Treasury to the Department of Commerce in 1979.[10] The antidumping law was further amended by title VI of the Trade and Tariff Act of 1984,[11] and title I, subtitle C, part 2 of the Omnibus Trade and Competitiveness Act of 1988.

BASIC PROVISIONS OF TITLE VII ANTIDUMPING REMEDY

Section 731 of the Tariff Act of 1930, as amended,[12] provides that an antidumping duty shall be imposed, in addition to any other duty, if two conditions are met. First, the Department of Commerce (DOC) must determine that "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." Second, the International Trade Commission (ITC) must determine that "an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of that merchandise." If the DOC determines that LTFV sales exist and the ITC determines that material injury exists, an antidumping duty order is issued imposing antidumping duties equal to the amount by which foreign market value exceeds the United States price for the merchandise (the dumping margin).

Basis of comparison: Foreign market value

The determination of whether LTFV sales exist, and what the margin of dumping is, is based on a comparison of foreign market value with the United States price of each import sale made during the relevant time period under investigation. Leases which are equivalent to sales may be treated as import sales. Foreign market value is determined by one of three methods, in order of preference: home market sales, third-country sales, or constructed value. If such or similar merchandise is sold in the market of the exporting country for home consumption, then foreign market value is to be based on such sales. If home market sales do not exist, or are so few as to form an inadequate basis for comparison, then the price at which such or similar merchandise is sold for exportation to countries other than the United States becomes the basis for foreign market value. If neither home market sales nor third-country sales form an adequate basis for comparison, then foreign market value is the constructed value of the imported merchandise. Constructed value is determined by a formula set forth in the statute,

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[9] Public Law 96-39, approved July 26, 1979.

[10] Reorganization Plan No. 3 of 1979, 44 Fed. Reg 69273 (Dec. 3, 1979); and Exec. Order No. 12188, January 2, 1980, 45 Fed. Reg. 989.

[11] Public Law 98-573, approved October 30, 1984. Technical corrections to the 1984 amendments were included in section 1886 of the Tax Reform Act of 1986, Public Law 99-514, approved October 22, 1986.

[12] 19 U.S.C. 1673.

which is the sum of costs of production, plus at least 10 percent for general expenses, plus at least 8 percent for profit.

Foreign market value based on home market or third-country sales is a single price, in U.S. dollars, which represents the weighted average of prices in the home market or third-country market during the period under investigation. Sales made at less than cost of production are disregarded in the determination of foreign market value. Adjustments are made for differences in merchandise, quantities sold, and circumstances of sale to provide for comparability of foreign market value with United States price. Averaging or sampling techniques may be used in the determination of foreign market value whenever a significant volume of sales is involved or a significant number of price adjustments is required.

If the exporting country is a nonmarket economy, the foreign market value is constructed by valuing the nonmarket economy producer's "factors of production" in a market economy country which is a significant producer of comparable merchandise and which is at a level of economic development comparable to the nonmarket economy, and adding amounts for general expenses, profits, and packing. The "factors of production" include labor, raw materials, energy and other utilities, and representative capital costs.

In determining whether a country is a nonmarket economy, the DOC will consider: the convertibility of the country's currency, whether wages are determined through free bargaining between labor and management, whether foreign investment is permitted, the extent of government ownership, and the extent of government control over the allocation of resources and the pricing and output decisions of enterprises. The DOC's determination of whether a country is a nonmarket economy is not subject to judicial review.

United States price

The margin of dumping, and the amount of antidumping duty to be imposed, is determined by comparing the foreign market value with the United States price of each entry into the United States of foreign merchandise subject to the investigation. United States price is equal to the purchase price or the exporter's sales price of the merchandise, whichever is appropriate. "Purchase price" is the price at which merchandise is purchased or agreed to be purchased prior to date of importation to the United States. It may be used if transactions between related parties indicate the merchandise has been sold prior to importation to a U.S. buyer unrelated to the producer. "Exporter's sales price" is the price at which merchandise is sold or agreed to be sold in the United States before or after importation, by or for the account of the exporter.

Material injury

Prior to issuance of an antidumping duty order, the ITC must determine that the domestic industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarded, by reason of imports at less than fair value. The standard of injury under the antidumping law, material injury, is the same standard as that under the countervailing duty law. Section 771(7) of the Tariff Act of 1930 defines "material injury" as harm which is not inconsequential, immaterial, or unimportant.

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury. The ITC is required to analyze the volume of imports, the effect of imports on U.S. prices of like merchandise, and the effects that imports have on U.S. producers of like products, taking into account many factors, including lost sales, market share, profits, productivity, return on investment, and utilization of production capacity. Also relevant are the effects on employment, inventories, wages, the ability to raise capital, and negative effects on the development and production activities of the U.S. industry. The ITC is required to cumulatively assess the volume and effect of like imports from two or more countries subject to investigation if the imports compete with each other and with like products of the domestic industry in the U.S. market. However, if imports from a country under investigation are negligible and have no discernable adverse impact on the U.S. industry, then the ITC may decide not to cumulate those imports with imports from the other countries. Furthermore, the ITC has discretion not to cumulate imports when the imports subject to investigation are products of Israel.

PROCEDURES FOR TITLE VII ANTIDUMPING INVESTIGATIONS

Initiation of investigation

Antidumping investigations may be self-initiated by the DOC or may be initiated as a result of a petition filed by an interested party. Petitions may be filed by any of the following, on behalf of the affected industry: (1) a manufacturer, producer, or wholesaler in the United States of a like product; (2) a certified or recognized union or group of workers which is representative of the affected industry; (3) a trade or business association with a majority of members producing a like product; (4) a coalition of firms, unions, or trade associations that have individual standing; (5) a coalition or trade association representative of processors, or processor and growers, in cases involving processed agricultural products. The DOC is required to provide technical assistance to small businesses to enable them to prepare and file petitions under the antidumping law.

Petitions are to be filed simultaneously with both the DOC and ITC. Within 20 days after the filing of a petition, the DOC must decide whether or not the petition is legally sufficient to commence an investigation. If so, an investigation is initiated with respect to imports of a particular product from a particular country. Section 609 of the Trade and Tariff Act of 1984 establishes a procedure whereby the DOC may monitor imports from additional supplier countries for up to 1 year in order to determine whether persistent dumping exists with respect to that product, and self-initiation of additional dumping cases is warranted.

Preliminary ITC injury determination

Within 45 days of the date of filing of the petition, or of self-initiation, the ITC must determine whether there is a "reasonable indication" of material injury, based on the best information available to it at the time. The petitioner bears the burden of proof with respect to this issue. If the ITC preliminary determination is negative, the investigation is terminated. If it is positive, the investigation continues.

Preliminary DOC LTFV determination

Within 160 days after the petition is filed or the investigation is self-initiated, the DOC must determine whether there is a "reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold, at less than fair value." The preliminary determination is based on the best information available to the DOC at the time. If affirmative, the preliminary determination must include an estimated average amount by which the foreign market value exceeds the United States price.

The effect of an affirmative preliminary determination is twofold: (1) The DOC must order the suspension of liquidation of all entries of foreign merchandise subject to the determination from the date of publication of the preliminary determination. The DOC must also order the posting of a cash deposit, bond, or other appropriate security for each subsequent entry of the merchandise equal to the estimated margin of dumping. (2) The ITC must begin its final injury investigation, and the DOC must make all information available to the ITC which is relevant to an injury determination. If the preliminary determination is negative, no suspension of liquidation occurs, and the DOC investigation simply continues.

An expedited preliminary determination within 90 days of initiation of the investigation may be made based on information received during the first 60 days if such information is sufficient and the parties provide a written waiver of verification and an agreement to have an expedited preliminary determination. A preliminary determination may also be expedited for cases involving short life cycle merchandise, if the foreign producer has been subject to prior affirmative dumping determinations on similar products. On the other hand, the preliminary determination may be postponed until 210 days after filing of petition or self-initiation, at the petitioner's request or in cases which the DOC determines are extraordinarily complicated.

If the petitioner alleges critical circumstances, the DOC must determine, on the basis of best information available at the time, whether (1) there is a history of dumping in the United States or elsewhere of this class or kind of merchandise, or the importer knew the merchandise was being sold at less than fair value; and (2) there have been massive imports of the merchandise over a relatively short period. This critical circumstances determination can be made prior to a preliminary determination of sales at less than fair value. If the DOC determines critical circumstances exist, then any suspension of liquidation ordered shall retroactively apply to unliquidated entries of merchandise entered up to 90 days prior to the date suspension of liquidation was ordered.

Final DOC LTFV determination

Within 75 days after the date of its preliminary determination, the DOC must issue a final LTFV determination, unless a timely request for extension is granted, in which case the final determination must be made within 135 days. If the final determination is negative, the investigation is terminated, including any suspension of liquidation which may be in effect, and all estimated antidumping duties are refunded and all appropriate bonds or other security are released. If the final determination is affirmative, the DOC orders the suspension of liquidation and posting of a cash deposit, bond, or other security (if such actions have not already been taken as a result of the preliminary determination), and awaits notice of the ITC final injury determination.

Final ITC injury determination

Within 120 days of a DOC affirmative preliminary determination or 45 days of a DOC affirmative final determination, whichever is longer, the ITC must make a final determination of material injury. If the DOC preliminary determination was negative, and the DOC final determination was affirmative, the ITC has until 75 days after the final affirmative determination to make its injury determination.

Termination or suspension of AD investigations

Either the DOC or ITC may terminate an AD investigation upon withdrawal of the petition by petitioner, or by the DOC if the investigation was self-initiated. The DOC may not, however, terminate an investigation on the basis of a quantitative restriction agreement limiting U.S. imports of the merchandise subject to investigation unless the DOC is satisfied that termination on the basis of such agreement is in the public interest.

The DOC may suspend an AD investigation on the basis of one of three types of agreements entered into with exporters who account for substantially all of the imports under investigation. The three types of agreements are: (1) an agreement to cease exports of the merchandise to the United States within 6 months of suspension of the investigation; (2) an agreement to revise prices to eliminate completely any sales at less than fair value; (3) an agreement to revise prices to eliminate completely the injurious effect of exports of such merchandise to the United States. The DOC may not, however, accept any such agreement unless it is satisfied that suspension of the investigation is in the public interest, and effective monitoring of the agreement is practicable. Unlike countervailing duty cases, antidumping investigations cannot generally be suspended on the basis of quantitative restriction agreements. The one exception is where the antidumping investigation involves imports from a nonmarket economy country.

Prior to actual suspension of an investigation, the DOC must provide notice of its intent to suspend and an opportunity for comment by interested parties. When the DOC decides to suspend the investigation, it must publish notice of the suspension, and issue an affirmative preliminary LTFV determination (unless previously issued). The ITC also suspends its investigation. Any suspension of liquidation ordered as a result of the affirmative preliminary LTFV determination, however, is to be terminated and all deposits of estimated antidumping duties or bonds posted are to be refunded or released.

If, within 20 days after notice of suspension is published, the DOC receives a request for continuation of the investigation from a domestic interested party or from exporters accounting for a significant proportion of exports of the merchandise, then both the DOC and ITC must continue their investigations.

The DOC has responsibility for overseeing compliance with any suspension agreement. Intentional violations of suspension agreements are subject to civil penalties.

Assessment of antidumping duties

Both the DOC and ITC must issue affirmative final determinations in order for an AD duty order to be issued. Within 7 days of notice of an affirmative final ITC determination, the DOC must issue an AD duty order which (1) directs the Customs Service to assess antidumping duties equal to the amount by which foreign market value exceeds the United States price, i.e., the dumping margin; (2) describes the merchandise to which the AD duty applies; and (3) requires the deposit of estimated AD duties pending liquidation of entries, at the same time as estimated normal customs duties are deposited.

Customs must assess AD duties within 6 months after the DOC receives satisfactory information on which to base the assessment, but no later than 12 months after the end of the annual accounting period within which the merchandise is imported or sold in the United States. The DOC must publish notice of its determination of foreign market value and United States price which shall be the basis for assessment of AD duties and for deposit of estimated AD duties on future entries.

Security in lieu of deposits

The DOC may permit, for not more than 90 days after publication of an AD duty order, the posting of a bond or other security in lieu of the deposit of estimated AD duties if certain conditions exist. The DOC must be satisfied that it will be able to determine, within such 90-day period, the foreign market value and the United States price for all merchandise entered on or after an affirmative LTFV determination (either preliminary or final, whichever is the first affirmative determination) and before publication of an affirmative final injury determination. Also, in order to undertake this expedited review, the preliminary determination in the investigation must not have been extended because the case was "extraordinarily complicated," the final determination must not have been extended, the DOC must receive information indicating that the revised margin would be significantly less than the dumping margin specified in the antidumping order, and there must be adequate sales to the United States since the preliminary (or final) determination to form a basis for comparison. The determination of such new dumping margin will then provide the basis for assessment of AD duties on the entries for which the posting of bond or other security has been permitted, and will also provide the basis for deposits of estimated AD duties on future entries.

If a cash deposit collected as security for estimated AD duties pursuant to an affirmative preliminary LTFV determination is greater than the amount of AD duty assessed pursuant to an AD

duty order, then the difference between the deposit and the amount of final AD duty will be refunded for entries prior to notice of the final injury determination. If the cash deposit is lower than the final AD duty under the AD order, then the difference is disregarded. No interest accrues in either case.

If estimated AD duties deposited for entries pending liquidation are greater than the amount of final AD duties determined under an AD order, then the difference will be refunded, together with interest on the amount of overpayment. If estimated AD duties are less than the amount of final AD duties, then the difference will be collected together with interest on the amount of such underpayment.

Administrative review

The DOC is required, upon request, to conduct an annual review of outstanding AD orders and suspension agreements. For all entries of merchandise subject to the review, the DOC must determine the foreign market value, United States price, and the amount of dumping margin. Such determination will provide the basis for assessment of AD duties on all entries subject to the review, and for deposits of estimated duties on entries subsequent to the period of review. The results of its annual review must be published together with a notice of any AD duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

A review of a final determination or of a suspension agreement shall be conducted by the DOC or ITC whenever it receives information or a request showing changed circumstances sufficient to warrant such review. Without good cause shown, however, no final determination or suspension agreement can be reviewed within 24 months of its notice. The party seeking revocation of an AD order has the burden of persuasion as to whether there are changed circumstances sufficient to warrant revocation.

Anti-circumvention authority

In 1988, specific authority was added to U.S. law to authorize the DOC to take action to prevent or address attempts to circumvent an outstanding antidumping duty order. The authority addresses four particular types of circumvention: assembly of merchandise in the United States, assembly of merchandise in a third country, minor alterations of merchandise, and later-developed merchandise. Under certain circumstances and after considering certain specified factors, the DOC may extend the scope of the antidumping duty order to include parts and components (in cases involving U.S. assembly), third country merchandise (in cases involving third country assembly), altered merchandise, or later-developed merchandise.

Judicial review

An interested party who is dissatisfied with a final determination under the antidumping law may file an action in the U.S. Court of International Trade for judicial review. To obtain judicial review of the administrative action, a summons and complaint must be filed concurrently within 30 days of publication of the final determination. The standard of review used by the Court is whether the determination is supported by "substantial evidence on the record" or "otherwise not in accordance with law."

Judicial review of interlocutory decisions, previously permitted, was eliminated by section 623 of the Trade and Tariff Act of 1984. Decisions of the Court of International Trade are subject to appeal to the U.S. Court of Appeals for the Federal Circuit.

As a result of provisions in the U.S.-Canada Free-Trade Agreement and its implementing legislation, final determinations in antidumping duty proceedings involving products of Canada are reviewed by a binational panel instead of by the U.S. Court of International Trade, if either the U.S. or Canadian government so requests. The binational panel will apply only U.S. law and U.S. standards of judicial review to decide whether U.S. law was applied correctly.

THIRD COUNTRY DUMPING

Section 1318 of the Omnibus Trade and Competitiveness Act of 1988 was enacted in response to concern over the injurious effects of foreign dumping in third country markets. Section 1318 establishes procedures for domestic industries to petition the U.S. Trade Representative to pursue U.S. rights under Article 12 of the GATT Antidumping Code. A domestic industry that produces a product like or directly competitive with merchandise produced by a foreign country may submit a petition to the U.S. Trade Representative if it has reason to believe that such merchandise is being dumped in a third country market and such dumping is injuring the U.S. industry.

If the U.S. Trade Representative determines there is a reasonable basis for the allegations in the petition, the U.S. Trade Representative shall submit to the appropriate authority of the foreign government an application requesting that antidumping action be taken on behalf of the United States. Article 12 of the GATT Antidumping Code requires that such an application "be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned." (paragraph 2, article 12). Accordingly, at the request of the U.S. Trade Representative, the appropriate officers of the Commerce Department and the ITC shall assist the U.S. Trade Representative in preparing any such application.

After submitting an application to the foreign government, the U.S. Trade Representative shall seek consultations with its representatives regarding the requested action. If the foreign government refuses to take any antidumping action, the U.S. Trade Representative shall consult with the domestic industry on whether action under any other U.S. law is appropriate.

Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Practices: Section 301 of the Trade Act of 1974

Chapter 1 of title III of the Trade Act of 1974, as amended[13] (commonly referred to as "Section 301"), provides the authority and procedures for the President to enforce U.S. rights under international trade agreements and to respond to certain unfair foreign practices. The predecessor statute, section 252 of the Trade Expansion Act of 1962 [14] was repealed and section 301 established in its place under the Trade Act of 1974. Section 301 was amended under title IX of the Trade Agreements Act of 1979 [15] in two principal respects: (1) to include specifically enforcement of U.S. rights and responses to actions by foreign countries inconsistent with or otherwise denying U.S. benefits under trade agreements; and (2) to place specific time limits on the procedures for investigating and taking action on petitions. Some further amendments were enacted under sections 304 and 307(b) of the Trade and Tariff Act of 1984 [16] to clarify certain authorities and practices covered by section 301, and to authorize certain actions with respect to foreign export performance requirements.

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[13] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2411.

The current statute reflects major modifications made by sections 1301-1303 of the Omnibus Trade and Competitiveness Act of 1988 [17] to the section 301 authority, as well as enactment of additional authorities commonly known as "Super 301" to deal with priority practices and priority countries and "Special 301" to deal with priority intellectual property right protection. The principal amendments in 1988 to strengthen the basic section 301 authority were: (1) to require the U.S. Trade Representative (USTR) to make unfair trade practice determinations in all cases, and to transfer authority to determine and implement section 301 action from the President to the USTR, subject to the specific direction, if any, of the President; (2) to make section 301 mandatory in cases of trade agreement violations or other "unjustifiable" practices, except in certain circumstances; (3) to include additional types of practices as specifically actionable under section 301; (4) to tighten and specify time limits on all investigations and actions; and (5) to require monitoring and enforcement of foreign settlement agreements and to provide for modification and termination of section 301 actions.

INTERNATIONAL CONSULTATIONS AND DISPUTE SETTLEMENT

Article XII and XIII of the General Agreement on Tariffs and Trade (GATT) as elaborated upon by the Texts Concerning a Framework for the Conduct of World Trade concluded in the Tokyo Round of Multilateral Trade Negotiations (MTN),[18] provide the general consultation and dispute settlement procedures applicable to GATT rights and obligations. In addition, the GATT agreements concluded in the MTN on specific nontariff barriers each contain procedures for consulting and seeking to resolve disputes among signatories concerning practices covered by each agreement.

While the specific mechanisms and time limits vary, the general common principles include (1) provisions for bilateral and multilateral consultations seeking to reach a mutually satisfactory solution without resort to dispute settlement; (2) the right of any signatory to a panel, composed of 3 to 5 impartial experts from countries not parties to the dispute acting in their individual capacities, which reviews the dispute and makes findings of fact and law; and (3) submission of panel findings to the Committee on Signatories to the particular MTN agreement or to the GATT Council, which reviews and may adopt the panel report and may authorize retaliatory action.

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[14] Public Law 87-794, sec. 252, approved October 11, 1962.

[15] Public Law 96-39, title IX, approved July 26, 1979.

[16] Public Law 98-573, approved October 30, 1984.

[17] Public Law 100-418, approved August 23, 1988.

[18] MTN/FR/W/20/Rev. 2, reprinted in House Doc. No. 96-153, pt. I at 619.

U.S. ENFORCEMENT AUTHORITY AND PROCEDURES

Chapter 1 of title III of the Trade Act of 1974, as amended, provides the domestic counterpart to the GATT consultation and dispute settlement procedures and U.S. domestic authority to impose import restrictions as retaliatory action, if necessary to enforce U.S. rights against unjustifiable, unreasonable, or discriminatory foreign trade practices which burden or restrict U.S. commerce. The broad inclusive nature of section 301 authority applies to practices and policies of countries whether or not they are covered by, or are members of, GATT or other trade agreements. The USTR administers the statutory procedures through an interagency committee.

Section 301 authority

Under section 301, *if* the U.S. Trade Representative determines that a foreign act, policy, or practice *violates or is inconsistent with a trade agreement or is unjustifiable* and burdens or restricts U.S. commerce, then action by the USTR to enforce the trade agreement rights or to obtain the elimination of the act, policy, or practice is *mandatory,* subject to the specific direction, if any, of the President. The USTR is not required to act, however, if (1) the GATT Contracting Parties have determined, a GATT panel has reported, or a dispute settlement ruling under a trade agreement finds that U.S. trade agreement rights have not been denied or violated; (2) the USTR finds that the foreign country is taking satisfactory measures to grant U.S. trade agreement rights, the foreign country has agreed to eliminate or phase out the practice or to an imminent solution to the burden or restriction on U.S. commerce, or has agreed to provide satisfactory compensatory trade benefits; or (3) the U.S. finds in extraordinary cases that action would have an adverse impact on the U.S. economy substantially out of proportion to the benefits of action, or action would cause serious harm to the U.S. national security. Any action taken must affect goods or services of the foreign country in an amount equivalent in value to the burden or restriction being imposed by that country on U.S. commerce.

If the USTR determines that the act, policy, or practice is *unreasonable or discriminatory* and burdens or restricts U.S. commerce and action by the United States is appropriate, then the USTR has *discretionary* authority as under prior law to take all appropriate and feasible action, subject to the specific direction, if any, of the President, to obtain the elimination of the act, policy, or practice.

As the form of action, the USTR is authorized to (1) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country involved; (2) impose duties or other import restrictions on the goods of, and notwithstanding any other provision of law, fees or restrictions on the services of, the foreign country for such time as the USTR deems appropriate; or (3) enter into binding agreements that commit the foreign country to (a) eliminate or phase out the act, policy, or practice, (b) eliminate any burden or restriction on U.S. commerce resulting from the act, policy, or practice, or (c) provide the United States with compensatory trade benefits that are satisfactory to the USTR. The USTR must also take all other appropriate and feasible action within the power of the President that the President may direct the USTR to take.

With respect to services, the USTR may also restrict the terms and conditions or deny the issuance of any access authorization (e.g., license, permit, order) to the U.S. market issued under Federal law, notwithstanding any other law governing the authorization. Such action can apply only prospectively to authorizations granted or applications pending on or after the date a section 301 petition is filed or the USTR initiates an investigation. Before imposing fees or other restrictions on services subject to Federal or State regulation, the USTR must consult as appropriate with the Federal or State agency concerned.

Action under section 301 may be taken on a nondiscriminatory basis or solely against the products or services of the country involved and with respect to any goods or sector regardless of whether they were involved in the particular act, policy, or practice.

In taking action, the USTR must give preference to tariffs over other forms of import restrictions and consider substituting on an incremental basis an equivalent duty for any other form of import restriction imposed. Any action with respect to export targeting must reflect, to the extent possible, the full benefit level of the targeting over the period during which the action taken has an effect.

Coverage of authority

The term "unjustifiable" refers to acts, policies, or practices which violate or are inconsistent with U.S. international legal rights, such as denial of national or most-favored-nation treatment, right of establishment, or protection of intellectual property rights.

The term "unreasonable" refers to acts, policies, or practices which are not necessarily in violation of or inconsistent with U.S. international legal rights, but are otherwise unfair and inequitable.

In determining whether an act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account to the extent appropriate. Unreasonable measures include, but are not limited to, acts, policies, or practices which (1) deny fair and equitable (a) opportunities for the establishment of an enterprise, (b) provision of adequate and effective intellectual property right protection, or (c) market opportunities, including foreign government toleration of systematic anticompetitive activities by or among private firms that have the effect of restricting on a basis inconsistent with commercial considerations access of U.S. goods to purchasing by such firms; (2) constitute export targeting; or (3) constitute a persistent pattern of conduct denying internationally-recognized worker rights, unless the USTR determines the foreign country has taken or is taking actions that demonstrate a significant and tangible overall advancement in providing those rights and standards throughout the country or such acts, policies, or practices are not inconsistent with the level of economic development of the country.

The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment. The term "commerce" includes, but is not limited to, services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by U.S. persons with implications for trade in goods or services.

Petitions and investigations

Any interested person may file a petition under section 302 with the USTR requesting the President to take action under section 301 and setting forth the allegations in support of the request. The USTR reviews the allegations and must determine within 45 days after receipt of the petition whether to initiate an investigation. The USTR may also self-initiate an investigation after consulting with appropriate private sector advisory committees. Public notice of determinations is required, and in the case of decisions to initiate, publication of a summary of the petition and an opportunity for the presentation of views, including a public hearing if timely requested by the petitioner or any interested person.

In determining whether to initiate an investigation of any act, policy, or practice specifically enumerated as actionable under section 301, the USTR has the discretion to determine whether action under section 301 would be effective in addressing that act, policy, or practice.

Section 303 requires the use of international procedures for resolving the issues to proceed in parallel with the domestic investigation. The USTR, on the same day as the determination to initiate an investigation, must request consultations with the foreign country concerned regarding the issues involved. The USTR may delay the request for up to 90 days in order to verify or improve the petition to ensure an adequate basis for consultation.

If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in the agreement, then the USTR must promptly request formal dispute settlement under the agreement before the earlier of the close of the consultation period specified in the agreement, if any, or 150 days after the consultation began. The USTR must seek information and advice from the petitioner, if any, and from appropriate private sector advisory committees in preparing presentations for consultations and dispute settlement proceedings.

USTR unfairness and action determinations and implementation

Section 304 sets forth specific time limits within which the USTR must make determinations of whether an act, policy, or practice meets the unfairness criteria of section 301 and, if affirmative, what action, if any, should be taken. These determinations are based on the investigation under section 302, and, if a trade agreement is involved, on the international consultations and, if applicable, on the results of the dispute settlement proceedings under the agreement.

The USTR must make these *determinations*:

—within 18 months after the date the investigation is initiated or 30 days after the date the dispute settlement procedure is concluded, whichever is earlier, in cases involving a trade agreement, other than the agreement on subsidies and countervailing measures;

—within 12 months after the date the investigation is initiated in cases not involving trade agreements or involving the agreement on subsidies and countervailing measures; or

—within 6 months after the date the investigation is initiated in cases involving intellectual property rights priority countries, or within 9 months if the USTR determines such cases (1) involve complex or complicated issues that require additional time, (2) the foreign country is making substantial progress on legislative or administrative measures that will provide adequate and effective protection, or (3) the foreign country is undertaking enforcement measures to provide adequate and effective protection.

The applicable deadline is postponed by up to 90 days if consultations with the foreign country involved were so delayed.

Before making the determinations, the USTR must provide an opportunity for the presentation of views, including a public hearing if requested by an interested person and obtain advice from the appropriate private sector advisory committees. If expeditious action is required, the USTR must comply with these requirements after making the determinations. The USTR may also request the views of the International Trade Commission on the probable impact on the U.S. economy of taking the action. Any determinations must be published in the Federal Register.

Section 305 requires the USTR to *implement* any section 301 actions within 30 days after the date of the determination to take action. The USTR may delay implementation by not more than 180 days if (1) the petitioner or, in the case of a self-initiated investigation, a majority of the domestic industry requests a delay; or (2) the USTR determines that substantial progress is being made, or that a delay is necessary or desirable, to obtain U.S. rights or a satisfactory solution. In cases involving intellectual property rights priority countries, action implementation may be delayed beyond the 30 days only if the extraordinary circumstances apply and by not more than 90 days.

If the USTR determines to take no action in a case involving an affirmative determination of export targeting, the USTR must take alternative action in the form of establishing an advisory panel to recommend measures to promote the competitiveness of the affected domestic industry. The panel must submit a report on its recommendations to the USTR and the Congress within 6 months. On the basis of this report and subject to the specific direction, if any, of the President, the USTR may take administrative actions authorized under any other law and propose legislation to implement any other actions that would restore or improve the international competitiveness of the domestic industry and must submit a report to the Congress within 30 days after the panel report is submitted on the actions taken and proposals made.

Monitoring of foreign compliance; modification and termination of actions

Section 306 requires the USTR to monitor the implementation of each measure undertaken or so-called settlement agreement entered into by a foreign country under section 301. If the USTR considers that a foreign country is not satisfactorily implementing a measure or agreement, the USTR must determine what further action will be taken under section 301. The non-implementation is treated as a violation of a trade agreement subject to mandatory section 301 action as if it is a decision on the original investigation and is subject to the same time limits and procedures for implementation as other action determinations. Before making the determination on further action, the USTR must consult with the petitioner, if any, and with representatives of the domestic industry concerned and provide interested persons an opportunity to present views.

Section 307 authorizes the USTR to modify or terminate a section 301 action, subject to the specific direction, if any, of the President, if (1) any of the exceptions to mandatory section 301 action in the case of trade agreement violations or unjustifiable acts, policies, or practices applies, (2) the burden or restriction on U.S. commerce of the unfair practice has increased or decreased, or (3) discretionary section 301 action is no longer appropriate. Before modifying or terminating any section 301 action, the USTR must consult with the petitioner, if any, and with representatives of the domestic industry concerned, and provide an opportunity for other interested persons to present views.

Any section 301 action shall terminate automatically if it has been in effect for 4 years and neither the petitioner nor any representative of the domestic industry which benefits from the action has submitted to the USTR in the final 60 days a written request for continuation. The USTR must give the petitioner and representatives of the domestic industry at least 60 days advance notice by mail of termination. If a request for continuation is submitted, the USTR must conduct a review of the effectiveness of section 301 or other actions in achieving the objectives and the effects of actions on the U.S. economy, including consumers.

Information requests; reporting requirements

Under section 308, USTR makes available information (other than confidential) upon receipt of a written request by any person concerning (1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights to the extent such information is available in the Federal Government; (2) U.S. rights under any trade agreement and the remedies which may be available under that agreement and U.S. laws; and (3) past and present domestic and international proceedings or actions with respect to the policy or practice. If the information is not available, within 30 days after receipt of the request, the USTR must request the information from the foreign government or decline to request the information and inform the person in writing of the reasons.

The USTR must submit a semiannual report to the Congress describing petitions filed and determinations made, developments in and the status of investigations and proceedings, actions taken or the reasons for no action under section 301, and the commercial effects of section 301 actions taken. The USTR must also keep the petitioner regularly informed of all determinations and developments regarding section 301 investigations.

IDENTIFICATION OF INTELLECTUAL PROPERTY RIGHTS PRIORITY COUNTRIES ("SPECIAL 301")

Section 182 of the Trade Act of 1974, as added by section 1303 of the Omnibus Trade and Competitiveness Act of 1988, requires the USTR to identify, within 30 days after submission of the annual National Trade Estimates (foreign trade barriers) report to the Congress, those foreign countries that (1) deny adequate and effective protection of intellectual property rights or fair and equitable market access to U.S. persons that rely upon intellectual property protection, and (2) those countries under (1) determined by the USTR to be priority foreign countries. The USTR identifies as priorities only those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact on the relevant U.S. products and that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective intellectual property right protection. The USTR at any time may revoke or make an identification of a priority country, but must include in the semiannual section 301 report to the Congress a detailed explanation of the reasons for a revocation.

Section 302(b) requires the USTR to initiate a section 301 investigation within 30 days after identification of a priority country with respect to any act, policy, or practice of that country that was the basis of the identification, unless the USTR determines initiation of an investigation would be detrimental to U.S. economic interests and reports the reasons in detail to the Congress. The procedural and other requirements of section 301 authority generally apply to these cases except for tighter time limits to make determinations under section 304 and to implement actions under section 305.

IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES ("SUPER 301")

Section 310 of the Trade Act of 1974, as added by section 1302 of the Omnibus Trade and Competitiveness Act of 1988, requires the USTR, within 30 days after the National Trade Estimates (foreign trade barriers) report to the Congress in 1989 and 1990, to identify trade liberalization priorities. This identification includes (1) priority practices, including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase U.S. exports, either directly or through the establishment of a beneficial precedent; (2) priority foreign countries; and (3) estimates of the total amount by which U.S. exports of goods and services to each foreign country identified would have increased during the preceding calendar year if the priority practices identified did not exist. The statute also lists specific factors that the USTR must take into account in identifying priority practices and priority foreign countries. The USTR must submit a report to the House Committee on Ways and Means and the Senate Committee on Finance listing the priority countries, the priority practices with respect to each of the priority countries, and the trade amounts estimated with respect to each of the priority countries.

Within 21 days after submission of the report, the USTR must initiate section 301 investigations with respect to all of the priority practices identified for each of the priority foreign countries. The USTR may, is not required to, initiate section 301 investigations with respect to all other priority practices identified.

The normal section 301 authorities, procedures, time limits, and other requirements generally apply to these investigations. In the consultations with the country under section 303, the USTR must seek to negotiate an agreement which provides for the elimination of, or compensation for, the priority practices within 3 years after the initiation of the investigation, and the reduction of these practices over 3 years with the expectation that U.S. exports to the country will increase incrementally during each year as a result. Any investigation will be suspended if such an agreement is entered into with the country before the date on which any section 301 action may be required to be implemented under section 305. If the USTR determines that the country is not in compliance with such an agreement, the USTR must continue the investigation as though it had not been suspended.

On the date the National Trade Estimates report is due in 1990, and on that date in succeeding years, the USTR must submit a report which includes (1) revised total export estimates for each priority foreign country; (2) evidence that demonstrates, in the form of increased exports to each priority country during the previous year, substantial progress during each of the 3 years toward the goal of eliminating priority practices in the case of countries that have entered into an agreement, and the elimination of such practices by countries that have not entered into an agreement; and (3) to the extent this evidence cannot be provided, any actions that have been taken by the USTR under section 301 with respect to the priority practices of each priority country. The USTR may exclude from the report in any year after 1993 any foreign country identified if the evidence submitted in the previous two reports demonstrated that all the priority practices identified with respect to that country have been eliminated.

FOREIGN DIRECT INVESTMENT

Section 307(b) of the Trade and Tariff Act of 1984 requires the U.S. Trade Representative to seek the reduction and elimination of foreign export performance requirements through consultations and negotiations with the country concerned if the USTR determines, with interagency advice, that U.S. action is appropriate to respond to such requirements that adversely affect U.S. economic interests. In addition, the USTR may impose duties or other import restrictions on the products or services of the country involved, including exclusion from entry into the United States of products subject to these requirements. The USTR may provide compensation for such action subject to the provisions of section 123 of the Trade Act of 1974 if necessary or appropriate to meet U.S. international obligations.

Section 307(b) authority does not apply to any foreign direct investment, or to any written commitment relating to a foreign direct investment that is binding, made directly or indirectly by any United States person prior to October 30, 1984 (date of enactment of the Act).

Unfair Practices in Import Trade: Section 337 of the Tariff Act of 1930

Section 337 of the Tariff Act of 1930[19] declares unlawful unfair methods of competition and unfair acts in the importation or sale of articles (other than articles relating to certain intellectual property rights, as described below), the threat or effect of which is to (1) destroy or substantially injure an industry in the United States; (2) prevent the establishment of such an industry; or (3) restrain or monopolize trade and commerce in the United States. Section 337 also declares unlawful the importation or sale of articles that (1) infringe a valid and enforceable U.S. patent or registered copyright; or are made, produced, processed, or mined under a process covered by a valid and enforceable U.S. patent; (2) infringe a valid and enforceable U.S. registered trademark; or (3) infringe a registered mask work of a semiconductor chip product. For this separate class of certain intellectual property rights, the importation or sale of infringing articles is unlawful only if an industry in the United States relating to the articles protected by the patent, copyright, trademark, or mask work exists or is in the process of being established. A U.S. industry is considered to exist if there is (1) significant investment in plant and equipment; (2) significant employment of labor or capital; or (3) substantial investment in the exploitation of the patent, copyright, trademark, or mask work, including engineering, research and development, or licensing.

The International Trade Commission (ITC) is responsible for investigating alleged violations of section 337. Upon finding a violation, the ITC may issue an exclusion order and/or a cease and desist order, subject to Presidential disapproval.

Section 337 is unique among the trade remedy laws in that it is the only one subject to the provisions of the Administrative Procedure Act (APA).[20] All ITC investigations and determinations under section 337 must be conducted on the record after publication of notice and opportunity for hearing in conformity with the APA.[21]

The language of section 337 closely parallels that of section 5 of the Federal Trade Commission Act,[22] and therefore the scope of section 337 has been compared to that of the antitrust and unfair competition statutes. The ITC has significant discretion in determining what practices are "unfair" under section 337. In practice, however, the overwhelming majority of cases dealt with under section 337 has been in the area of patent infringement. Among the few nonpatent cases have been cases involving group boycotts, price fixing, predatory pricing, false labeling, false advertising, and trademark infringement.

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[19] Public Law 71-361, Sec. 337, approved June 17, 1930, 19 U.S.C. 1337.

[20] Act of June 11, 1946, ch. 324, sections 1-12, 5 U.S.C. 551 et seq.

[21] 19 U.S.C. 1337(c).

[22] Public Law 63-203, approved September 26, 1914, 38 Stat. 717, 15 U.S.C. 45.

Whenever, in the course of a section 337 investigation, the ITC has reason to believe that the matter before it involves dumping or subsidization of imports within the purview of the antidumping or countervailing duty laws, it must notify the administering authority of those laws for appropriate action.[23] If the alleged violation of section 337 is based solely on such dumping or subsidization practices, the ITC must terminate (or not initiate) the section 337 investigation. If it is based in part on such practices, and in part on other alleged practices, then the ITC may continue (or initiate) an investigation under section 337. This provision is designed to avoid duplication and conflicts in the administration of the unfair trade practice laws.

Procedure

The ITC is required to investigate any alleged violation of section 337 on complaint under oath or upon its own initiative. The ITC must conclude its investigation and make its determination at the earliest practicable time within one year, except in more complicated cases which must be concluded within 18 months. In the course of each investigation, the ITC is required to consult with and seek advice and information from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and other appropriate departments and agencies.

If a violation of section 337 is found, the ITC must direct that the foreign articles be excluded from entry into the United States, unless it determines that such articles should not be excluded in consideration of the effect of exclusion on:

(a) the public health and welfare;
(b) competitive conditions in the U.S. economy;
(c) the production of like or directly competitive articles in the United States; and
(d) U.S. consumers.

In appropriate circumstances, the ITC may issue temporary exclusion orders during the course of an investigation if it determines that there is reason to believe that there is a violation of section 337. In the event of a temporary exclusion order, entry is to be permitted only under bond. If petitioned by a complainant for issuance of a temporary exclusion order, the ITC must determine whether or not to issue such an order within 90 days after initiation of an investigation, with a possible extension of 60 days in more complicated cases.

In addition to or in lieu of issuing an exclusion order, the ITC may issue an appropriate cease and desist order to be served on the violating party or parties, unless it finds that such order should not be issued in consideration of the effect of such order on the same public interest factors listed above.

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[23] 19 U.S.C. 1337(b)(3).

The ITC may at any time, upon such notice and in such manner as it deems proper, modify or revoke any cease and desist order, and issue an exclusion order in its place.

Any person who violates a cease and desist order issued under this section shall be subject to a civil penalty of up to the greater of $100,000 per day or twice the domestic value of the articles entered or sold on such day in violation of the order.

In the event that a person has been served with notice of proceedings and fails to appear to answer the complaint in cases where the complainant seeks relief limited solely to that person, the ITC must presume the facts alleged by the complainant to be true. If requested by the complainant, the ITC must issue an exclusion order and/or a cease and desist order against the person in default, unless it finds that such order should not be issued for the same public interest reasons listed above. Similarly, if no person appears to contest the investigation and violation is established, the ITC may issue a general exclusion order.

The ITC may order seizure and forfeiture of goods subject to an exclusion order if an attempt has been made to import the goods and the owner or importer has been notified that a further attempt to import the goods would lead to seizure and forfeiture.

Presidential and judicial review

Following an ITC determination of a violation of section 337, the President may, within 60 days after receiving notification, disapprove the ITC determination for "policy reasons." The statute does not specify what types of policy reasons may provide the basis for disapproval. Upon Presidential disapproval, actions taken by the ITC cease to have effect. If the President does not disapprove the ITC determination, or if he approves it, then the ITC determination becomes final. Any person adversely affected by a final ITC determination under section 337 may appeal the determination to the U.S. Court of Appeals for the Federal Circuit.

GATT case

In response to a complaint by the European Economic Community about the application of section 337, the GATT Council agreed on October 7, 1987 to establish a panel to review the U.S. law. On November 23, 1988, the panel found that section 337 is inconsistent with Article III:4 of the GATT, because it treats imported articles that violate U.S. patents less favorably than products of U.S. origin. The panel recommended that the GATT Contracting Parties request the United States to bring its procedures for patent infringement cases involving imports into conformity with the GATT. [As of this writing, the panel decision had not formally been adopted by the Contracting Parties.]

Positive Adjustment by Industries Injured by Imports: Chapter 1 of Title II of the Trade Act of 1974

Chapter 1 of title II of the Trade Act of 1974,[24] as amended by section 1401 of the Omnibus Trade and Competitiveness Act of

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[24] 19 U.S.C. 2251-2253.

1988,[25] sets forth the authority and procedures for the President to take action, including import relief, to facilitate efforts by a domestic industry which has been seriously injured by imports to make a positive adjustment to import competition.

From the outset of the trade agreements program in 1934, U.S. policy of seeking liberalization of trade barriers has been accompanied by recognition that difficult economic adjustment problems could result for particular sectors of the economy and that the possibility of serious injury to domestic industries by increased import competition should be minimized. Beginning with bilateral trade agreements in the early 1940's, U.S. trade agreements, and eventually U.S. domestic law, have provided for a so-called "escape clause" mechanism for import relief. This mechanism, while amended over the years, has basically provided authority for the President to withdraw or modify concessions and impose duties or other restrictions on imports of any article which causes or threatens serious injury to the domestic industry producing a like or directly competitive article, following an investigation and determination by the International Trade Commission (ITC) (formerly the U.S. Tariff Commission).

Under his basic trade agreements authority in section 350 of the Tariff Act of 1930 the President issued three Executive orders setting forth procedures and criteria for escape-clause relief which governed from 1947 to 1951. Section 7 of the Trade Agreement Extension Act of 1951 contained the first statutory procedure and criteria for escape-clause action, which governed from 1951 until replaced by sections 301, 351 and 352 of the Trade Expansion Act of 1962. The 1962 provisions, which also introduced the concept of trade adjustment assistance (see separate section), were repealed and replaced by section 201-203 of the Trade Act of 1974. In 1988, the 1974 provisions were rewritten to place a greater emphasis on positive adjustment.

Primarily at U.S. insistence, an escape clause provision modeled after language in the 1947 Executive Order was included in the General Agreement on Tariffs and Trade (GATT) as Article XIX.[26] In order to restore and maintain the mutual balance of previously agreed GATT trade agreement obligations, countries adversely affected by the import relief actions may make offsetting withdrawals or modifications of concessions, or the country taking the import relief action may seek agreement on new concessions as compensation (see chapter 6 on trade agreement authorities for description of U.S. law).

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[25] Public Law 100-418, approved August 23, 1988. Amendments to section 201-203 were also made by sections 248 and 249 of the Trade and Tariff Act of 1984, Public Law 98-573, approved October 1984.

[26] The language of GATT Article XIX is as follows: "If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

Petitions and investigations

An entity representative of an industry (including a trade association, firm, union or group of workers) may file a petition under section 202 of the Trade Act of 1974 with the ITC. The petition must include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition. Alternatively, the President, U.S. Trade Representative, or the House Committee on Ways and Means or Senate Committee on Finance may request an investigation.

Upon petition, request, or on its own motion, the ITC conducts an investigation "to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Substantial cause is defined as "a cause which is important and not less than any other cause."

In making its determination the Commission must take into account all relevant economic factors, including certain factors specified in the statute,[27] and must consider the condition of the domestic industry over the course of the relevant business cycle. The Commission may determine to treat as the domestic industry: (1) only the portion or subdivision producing the like or directly competitive article of a producer of more than one article; and (2) only production concentrated in a major geographic area under certain circumstances. The Commission is required, to the extent information is available, in the case of a domestic producer which also imports, to treat as part of the domestic industry only the domestic production of such producer.

A public hearing is required during the course of the investigation. Whenever during the investigation the Commission has reason to believe increased imports are attributable in part to unfair trade practices, then it must promptly notify the agency administering the appropriate remedial law.

The ITC must make its injury determination within 120 days of the petition, unless it determines the case is extraordinarily complicated, in which case there may be an extension of 30 days. If the ITC makes an affirmative injury finding, then it must recommend the action that would address the injury and be the most effective in facilitating efforts by the domestic industry to make a positive adjustment; such recommended action must be either a tariff,

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[27] These factors include: with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry; with respect to threat of serious injury, a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned; the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development, the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic producers. The presence or absence of any factor is not necessarily dispositive.

tariff-rate quota, quantitive restriction, adjustment measures, or a combination thereof.

The ITC's remedy recommendation and report must be submitted to the President within 180 days of the petition. The report must also be made available to the public, and a summary of the report must be published in the Federal Register.

Adjustment plans and commitments

Under title II, as amended, petitioners are encouraged to submit, at any time prior to the ITC injury determination, a plan to promote positive adjustment to import competition. The law provides that a positive adjustment occurs when (1) the domestic industry is able to compete successfully with imports after actions taken under section 204 terminate, or the domestic industry experiences an orderly transfer of resources to other productive pursuits; and (2) dislocated workers in the industry experience an orderly transition to productive pursuits.

The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated.

Before submitting an adjustment plan, the petitioner and other members of the domestic industry that wish to participate may consult with the U.S. Trade Representative and other Federal Government officials for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan.

In addition, during the ITC investigation, the ITC is required to seek information (on a confidential basis to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition. Any party may individually submit to the ITC commitments regarding actions such party intends to take to facilitate positive adjustment to import competition.

Provisional relief

The amendments made by the 1988 Act authorize the President to provide emergency import relief for perishable agricultural products within 28 days after filing a petition if the ITC has monitored imports for at least 90 days and the ITC makes an affirmative preliminary injury determination. With respect to products other than perishable agricultural products, the President may provide provisional import relief within 127 days after a petition is filed if the ITC makes an affirmative injury determination and also determines that critical circumstances exist.

Presidential action

Within 60 days of receiving an affirmative ITC determination and report, the President shall take all appropriate and feasible action within his power which he determines will facilitate efforts by the domestic industry to make a positive adjustment and will provide greater economic and social benefits than costs. Any import relief provided may not exceed the amount necessary to prevent or remedy the serious injury.

In determining what action is appropriate, the President is required to consider a number of factors, including the adjustment plan (if any), individual commitments, probable effectiveness of action to promote positive adjustment, other factors related to the national economic interest, and the national security interest.

The actions authorized to be taken by the President include import relief, adjustment measures, auctioned quotas, orderly marketing agreements, international negotiations, legislative proposals, and any other action within his power.

Action under this title may be taken for up to 8 years. If the action taken is for less than 8 years, then one extension for such time as will result in a total period of not more than 8 years may be provided. As provided in section 302(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the President exempts Canada from import relief measures if he determines that imports from Canada of the article are not substantial (normally 5 to 10 percent or less of total imports) and are not contributing importantly to the injury or threat thereof.

The Trade Policy Committee, chaired by the U.S. Trade Representative, is required to make a recommendation to the President as to what action the President should take. On the day the President takes action under this title, he must submit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action recommended by the ITC, the President shall state in detail the reasons for the difference. If the President decides that there is no appropriate and feasible action to take with respect to a domestic industry, the President is required to transmit to Congress on the day of such decision a document that sets forth in detail the reasons for the decision.

Congress may adopt a joint resolution of disapproval within 90 legislative days under the expedited procedures of section 152 of the Trade Act if the President takes action which is different from that recommended by the ITC or if the President declines to take any action. Under these procedures, resolutions are referred to the House Committee on Ways and Means and the Senate Committee on Finance, which are subject to a motion to discharge if the resolution has not been reported within 30 legislative days. No amendments to the motion or to the resolution are in order. Within 30 days after enactment of such a resolution, the President must proclaim the relief recommended by the Commission.

Monitoring, modification, and termination of action

If Presidential action is taken, the ITC is required to monitor developments in the industry, including efforts by the domestic industry to adjust, and to report thereon every 2 years.

After 2 years have lapsed, the President may reduce, modify, or terminate action if either (1) the domestic industry requests it on the basis that it has made a positive adjustment, or (2) the President determines that changed circumstances warrant such reduction, modification, or termination. Upon request of the President, the ITC must advise the President as to the probable economic effects on the domestic industry of any proposed reduction, modification, or termination of action.

After any action taken under this title has terminated, the ITC must evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, and submit a report thereon to the President and to the Congress within 180 days of the termination of the action.

Subsequent investigations

Except for good cause determined by the Commission to exist, no investigation may be initiated with respect to the same subject matter as a previous investigation under this title, unless 1 year has elapsed since the ITC report to the President.

If import relief was provided, then no investigation may be initiated with respect to the same subject matter for a period of time equivalent to the period of import relief granted.

Relief From Market Disruption by Imports From Communist Countries: Section 406 of the Trade Act of 1974

Section 406 of the Trade Act of 1974 [28] was established to provide a remedy against market disruption caused by imports from Communist countries. The provision applies to imports from any Communist country, irrespective of whether it has received or currently receives nondiscriminatory most-favored-nation treatment. Enactment of section 406 resulted from concern that traditional remedies for unfair trade practices, such as the antidumping and countervailing duty laws, may be insufficient to deal with a sudden and rapid influx of substantial imports that can result from Communist country control of their pricing levels and distribution process.

The provisions of section 406 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, are in many ways similar to those under sections 201–203 of the Trade Act, except that section 406 provides a lower standard of injury causation and a faster relief procedure, and the investigation focuses on imports from a specific country.

Under section 406(a), the International Trade Commission (ITC) conducts investigations to determine whether imports of an article produced in a Communist country (any country dominated or controlled by communism) are causing market disruption with respect to a domestically produced article. Market disruption exists whenever imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly so as to be a significant cause of material injury, or threat thereof, to such domestic industry. Imports are increasing rapidly if there has been a significant increase in imports, either actual or relative to domestic production, during a recent period of time. In making a determination of market disruption, the ITC is required to consider, among other factors, the volume of imports, the effect of imports on prices, the impact of imports on domestic producers, and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

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[28] Public Law 93–618, approved January 3, 1975, and amended by section 1411 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) 19 U.S.C. 2436.

The ITC conducts such investigations at the request of the President or the U.S. Trade Representative, upon resolution of either the House Committee on Ways and Means or the Senate Committee on Finance, on its own motion, or upon the filing of a petition by an entity (including a trade association, firm, union, or a group of workers) which is representative of an industry. The Commission must complete its investigation within 3 months including a public hearing.

If the ITC finds that market disruption exists, it must also recommend to the President relief in the form of rates of duty or quantitative restrictions that will prevent or remedy such market disruption. The President then has 60 days to advise Congress as to what, if any, relief he will proclaim. Any import relief must be proclaimed within 15 days after the determination to provide it, except that the President has an additional 60 days to negotiate an orderly marketing agreement if he decides to provide relief in that form. Relief applies only to imports from the subject Communist country. Relief is limited to a maximum 5-year period subject to one renewal of up to 3 years.

Section 406(c) authorizes the President, prior to an ITC determination, to take temporary emergency action with respect to imports from a Communist country whenever he finds that there are reasonable grounds to believe there is market disruption. When taking such action, the President must also request the Commission to conduct an investigation under section 406(a). Any emergency relief ceases to apply on the day the Commission makes a negative finding or on the effective date of action by the President following an affirmative ITC finding.

Public Auction of Import Licenses: Section 1102 of the Trade Agreements Act of 1979

Section 1102 of the Trade Agreements Act of 1979 authorizes the President to sell import licenses by public auction, under such terms and conditions as the President deems appropriate. Any regulations prescribed under this authority must, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

Import licenses which are potentially subject to this auction authority are identified in section 1102 by the law authorizing the import restriction. For example, import licenses used to administer a quantitative restriction under the escape clause (section 203 of the Trade Act of 1974), the market disruption clause (section 406 of the Trade Act of 1974) or section 301 of the Trade Act of 1974 may be sold by public auction. Any quantitative import restriction imposed under the International Emergency Economic Powers Act or the Trading With the Enemy Act may also be administered by an auctioned import license. Certain agricultural import quotas, however (such as certain meat quotas, cheese quotas, and dairy quotas) are exempt from the auction authority and therefore may not be administered by means of auctioned licenses.

Trade Adjustment Assistance

The trade adjustment assistance (TAA) programs were first established under the Trade Expansion Act of 1962 for the purpose of assisting in the special adjustment problems of workers and firms dislocated as a result of a Federal policy of reducing barriers to foreign trade. As a result of limited eligibility and usage of the programs, criteria and benefits were liberalized under title II of the Trade Act of 1974, Public Law 93-618. The Omnibus Budget Reconciliation Act of 1981 (OBRA), Public Law 97-35, reformed the program for workers as proposed by the Administration. The amendments, particularly in program eligibility and benefits, were intended to reduce program cost significantly and to shift its focus from income compensation for temporary layoffs to return to work through training and other adjustment measures for the long-term or permanently unemployed. The OBRA also made relatively minor modifications in the firm program. Most amendments became effective on October 1, 1981. Both programs were extended at that time for 1 year, to terminate on September 30, 1983.

Public Law 98-120 (H.R. 3813 as amended by the Senate), approved on October 12, 1983, extended the worker and firm TAA programs for 2 years until September 30, 1985. Sections 2671-2673 of the Deficit Reduction Act of 1984, Public Law 98-369, included three provisions (sections 3, 6, and 8 of H.R. 3391 as passed by the House on September 15, 1983) which amended the program for workers to increase the availability of worker training allowances and the level of job search and relocation benefits, and amended the program for firms to increase the availability of industrywide technical assistance.

The termination date of the worker and firm TAA programs was further extended under temporary legislation in the first session of the 99th Congress (Public Laws 99-107, 99-155, 99-181, and 99-189) until December 19, 1985, The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99-272 approved April 7, 1986, reauthorized the TAA programs for workers and firms for 6 years retroactively from December 19, 1985, until September 30, 1991, with amendments.

Sections 1421-1430 of Public Law 100-418, the Omnibus Trade and Competitiveness Act of 1988 (OCTA), enacted on August 23, 1988, made significant amendments in the worker TAA program, particularly concerning the eligibility criteria for cash benefits, funding, and administration, further increasing the emphasis on worker training. The amendments also expand TAA eligibility coverage of workers and firms, contingent upon the imposition of an import fee to fund program costs. The OCTA extended TAA program authorization for an additional 2 years until September 30, 1993.

TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR WORKERS

Trade adjustment assistance for workers under sections 221 through 250 of the Trade Act of 1974, as amended, consists of trade readjustment allowances (TRA), employment services, training and additional TRA allowances while in training, and job search and relocation allowances for certified and otherwise qualified workers.

The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State agencies under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to appy for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Certification requirements

A two-step process is involved in the determination of whether an individual worker will receive trade adjustment assistance: (1) certification by the Secretary of Labor of a petitioning group of workers in a particular firm as eligible to apply; and (2) approval by the State agency administering the program of the application for benefits of an individual worker covered by a certification.

The process begins by a group of three or more workers, their union, or authorized representative filing a petition with the ETA for certification of group eligibility. To certify a petitioning group of workers as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm or subdivision have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

The OCTA amendments expanded the potential eligibility coverage to include workers in any firm or subdivision of a firm that engages in exploration or drilling for oil or natural gas. In addition to prospective application, this extension applies retroactively to oil and natural gas workers separated from adversely affected employment after September 30, 1985 if they filed a petition by November 18, 1988 (90 days after date of OCTA enactment), were not covered by a prior certification, and could not have been certified eligible prior to the amendments. If an import fee is subsequently imposed (as described below), the OCTA further extends certification eligibility coverage one year thereafter to workers with independent firms in any industry that supply "essential goods or essential services" to firms adversely affected by increased imports.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed. A certification of eligibility to apply for TAA covers workers who meet the requirements and whose last total or partial separation from the firm or subdivision before applying for benefits occurred with 1 year prior to the filing of the petition.

State agencies must give written notice by mail to each worker to apply for TAA where it is believed the worker is covered by a certification of eligibility and also must publish notice of each certification in newspapers of general circulation in areas where certified workers reside. State agencies must also advise each adversely affected worker, at the time that worker applies for UI, of TAA program benefits as well as the procedures, deadlines, and qualifying requirements for applying. State agencies must advise each such worker to apply for training before or at the same time they apply for TRA benefits and promptly interview each certified worker and review suitable training opportunities available.

Qualifying requirements for trade readjustment allowances

In order to receive entitlement to payment of a trade readjustment allowance for any week of unemployment, an individual must be an adversely affected worker covered by a certification, file an application with the State agency, and meet the following qualifying requirements:

1. The worker's first qualifying separation from adversely affected employment occurred within the period of the certification applicable to that worker, i.e, on or after the "impact date" in the certification (the date on which total or partial layoffs in the firm or subdivision thereof began or threatened to begin, but never more than 1 year prior to the date of the petition), within 2 years after the date the Secretary of Labor issued the certification covering the worker, and before the termination date (if any) of the certification.
2. The worker was employed during the 52-week period preceding the week of the first qualifying separation at least 26 weeks at wages of $30 or more per week in adversely affected employment with a single firm or subdivision of a firm. As amended in 1986, a week of unemployment includes the week in which layoff occurs and up to 7 weeks of employer-authorized vacation, sickness, injury, maternity, or military leave, or service as a full-time union representative. Weeks of disability covered by workmen's compensation may also count toward the 26-week minimum.
3. The worker was entitled to unemployment insurance (UI), has exhausted all rights to any UI entitlement, including any extended benefits (EB) or Federal supplemental compensation (FSC) (if in existence), and does not have an unexpected waiting period for any UI. Under the program prior to October 1, 1981, TRA benefits were a supplement to State unemployment insurance and paid concurrently during weeks the worker was eligible for UI. A fundamental change under the 1981 amendments made TRA benefits a continuation of the UI program once UI benefits are exhausted.
4. The worker must not be disqualified with respect to the particular week of unemployment for EB by reason of the work acceptance and job search requirements under section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970. All TRA claimants in all States are subject to the provisions of the EB "suitable work" test under that Act (i.e., must accept any offer of suitable work, actively engage in seeking work, and register for work) after the end of their regular UI benefit period as a precondition for receiving any weeks of TRA payments. The EB work test does not apply to workers enrolled or participating in a TAA-approved train-

ing program; the test does apply to workers for whom TAA-approved training is certified as not feasible or appropriate.

5. The worker must be enrolled in, or have completed following separation from adversely affected employment within the certification period, a training program approved by the Secretary of Labor in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate" (e.g., training is not available that meets the criteria for approval, funding is not available to pay the full training costs, there is a reasonable prospect reasonably foreseeable that the worker will be reemployed by the firm from which separated). No cash benefits may be paid to a worker who, without justifiable cause, has failed to begin participation or has ceased participation in an approved training program until the worker begins or resumes participation, or to a worker whose waiver of participation in training is revoked in writing by the Secretary. This training requirement to encourage and enable workers to obtain early reemployment became effective under the OCTA amendments as of November 21, 1988; this 1988 amendment replaced a 1986 amendment that instituted a job search requirement as a condition for receiving cash benefits.

Cash benefit levels and duration

A worker is entitled to TRA payments for weeks of unemployment beginning the later of (a) the first week beginning more than 60 days after the filing date of the petition that resulted in the certification under which the worker is covered (i.e., weeks following the statutory deadline for certification), or (b) the first week after the worker's first total qualifying separation. As a result of the 1981 amendments, workers can no longer receive retroactive cash benefits for weeks of unemployment occurring up to one year prior to the filing of the petition.

The TRA cash benefit amount payable to a worker for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of unemployment insurance payable to the worker preceding that worker's first exhaustion of UI following the worker's first total qualifying separation under the certification, reduced by any Federal training allowance and disqualifying income deductible under UI law.

The maximum amount of basic TRA benefits payable to a worker for the period covered by any certification is 52 times the TRA payable for a week of total unemployment minus the total amount of UI benefits to which the worker was entitled in the benefit period in which the first qualifying separation occurred (e.g., a worker receiving 39 weeks of UI regular and extended benefits could receive a maximum 13 weeks of basic TRA benefits). UI and TRA payments combined are limited to a maximum 52 weeks in all cases involving extended compensation benefits (i.e., a worker who received 52 or more weeks of unemployment benefits would not be entitled to basic TRA). TRA benefits are not payable to workers participating in on-the-job training.

TRA benefits prior to October 1, 1981, were a uniform national standard of 70 percent of the worker's former gross weekly wage not to exceed the average weekly manufacturing wage, reduced by the amount of the worker's unemployment compensation entitlement, 50 percent of any part-time earnings, and certain Federal training allowances. The purpose of shifting cash benefits to State standards and other changes under the OBRA, effective as of October 1, 1981, was to reduce progam costs, to remove reemployment disincentives associated with the previous high net wage replacement, and to reduce the inequity in benefit amounts payable to import-impacted workers versus workers laid off for other reasons.

The 1988 amendments essentially restored the moveable 2-year eligibility period for collecting basic TRA in effect prior to the 1981 amendments (i.e., restored eligibility from the most recent rather than the first qualifying separation). The eligibility period for collecting basic TRA is the 104-week period that immediately follows the week in which a total qualifying separation occurs. If the worker has a subsequent total qualifying separation under the same certification, the eligibility period for basic TRA moves from the prior eligibility period to 104 weeks after the week in which the subsequent total qualifying separation occurred. This amendment also applies retroactively to workers who experienced a total qualifying separation in the period beginning on August 13, 1981 (date of enactment of the 1981 amendments), and ending on April 7, 1986 (date of enactment of the 1986 amendments), if the worker is enrolled in an approved training progam, has not failed or ceased to participate in the program without justifiable cause, and has been unemployed continuously since the total separation (aside from seasonal employment, odd jobs, or part-time temporary employment).

A worker may receive up to 26 additional weeks of TRA benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training in order to assist in completing such training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later. Additional benefits may be paid only during the 26-week period that follows the last week of entitlement to basic TRA, or that begins with the first week of training if the training begins after the exhaustion of basic TRA.

As provided in the 1988 amendments, a worker participating in approved training will continue to receive basic and additional TRA payments during breaks in such training if the break does not exceed 14 days, if the worker was participating in the training before the beginning of the break, resumes participation in the training after the break ends, and the break is provided for in the training schedule. Prior to the OCTA amendments, the worker had to be actually engaged in training in a particular week to be entitled to additional TRA for that week. Weeks when TRA is not payable because of this break provision will still count against the eligibility periods for both basic and additional TRA.

Training and other employment services, job research and relocation allowances

Training and other employment services and job search and relocation allowances are available through State agencies to certified workers whether or not they have exhausted UI benefits and become eligible for TRA payments.

Employment services consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training, preferably on-the-job, shall be approved for a worker if the following six conditions are met:

(1) There is no suitable employment available;

(2) The worker would benefit from appropriate training;

(3) There is a reasonable expectation of employment following training completion;

(4) Approved training is reasonably available from government agencies or private sources;

(5) The worker is qualified to undertake and complete such training; and

(6) such training is suitable for the worker and available at a reasonable cost.

If training is approved, the worker is entitled to payment of the costs for the Secretary directly or through a voucher system, unless they have been paid or are reimbursable under another Federal law. On-the-job training costs are payable only if such training is not at the expense of currently employed workers. The 1988 amendments added remedial education as a separate and distinct approvable training program, whereas previously it was approvable only as part of a broader training program that also included skills training.

The OCTA amendments converted training from an entitlement to the extent appropriated funds were available, as provided in the 1986 amendments, to an entitlement without regard to the availability of funds to pay the training costs. As of the OCTA amendments, effective on August 23, 1988, approved training is an entitlement in any case where the six criteria for approval are reasonably met, up to a $80 million statutory ceiling on annual fiscal year training costs (including job search and relocation allowances and subsistence payments) payable from TAA funds. Up to this limit workers are entitled to have the costs of approved training paid on their behalf. If the Secretary foresees that the $80 million ceiling would be exceeded in any fiscal year, the Secretary will decide how remaining TAA funds shall be apportioned among the States for the balance of that year. If an import fee is imposed, the entitlement ceiling will be raised to $120 million one year thereafter to accommodate expanded training costs for secondary workers.

As a result of the OCTA amendments, costs of approved TAA training may be paid solely from TAA funds, solely from other Federal or State programs or private funds, or from a mix of TAA and public or private funds, except if the worker in the case of a nongovernmental program would be required to reimburse any portion of the costs from TAA funds. Duplicate payment of training costs is prohibited, and workers are not entitled to payment of training costs from TAA funds to the extent these costs are paid or shared from other sources (i.e., training may still be approved if the fiscal year TAA funding entitlement limit is reached if the training costs are paid from outside sources).

Supplemental assistance is available to defray reasonable transportation and subsistence expenses for separate maintenance when training is not within the worker's commuting distance, equal to the lesser of actual per diem expenses or 50 percent of the prevailing Federal per diem rate for subsistence and prevailing mileage rates under Federal regulations for travel expenses.

Job search allowances are available to certified workers who cannot obtain suitable employment within their commuting area, are totally laid off, and who apply within 1 year after certification or last total layoff, whichever is later, or within 6 months after concluding training. As amended in 1981 and 1984, the allowance for reimbursement is equal to 90 percent of necessary job search expenses, based on the same increased supplemental assistance rates described above, up to a maximum amount of $800. The 1986 amendments require the Secretary of Labor to reimburse workers for necessary expenses incurred to participate in an approved job search program.

Relocation allowances are available to certified workers totally laid off at time of relocation who have been able to obtain an offer of or actual suitable employment only outside their commuting area, who apply within 14 months after certification or last total layoff, whichever is later, or within 6 months after concluding training, and whose relocation takes place within 6 months after application of completion of training. As amended in 1981 and 1984, the allowance is equal to 90 percent of reasonable and necessary expenses for transporting the worker, family, and household effects, based on the same increased supplemental assistance rates described above, plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Funding

Federal funds, as an entitlement from general revenues under the Federal Unemployment Benefit Account (FUBA) in the Department of Labor, cover the portion of the worker's total entitlement represented by the continuation of UI benefit levels in the form of TRA payments, plus the salaries and expenses for ETA personnel administering the program. Funds made available under grants to States defray expenses of any employment services. Funding for training, job search and relocation allowances, and related expenses is an annual appropriated entitlement under the Training and Employment Services account of the Department of Labor.

The States are reimbursed from Treasury general revenues for benefit payments and other costs incurred under the program. A penalty under section 239 of the Trade Act of 1974 provides for reduction by 15 percent of the credits for State unemployment taxes which employers are allowed against their liability for Federal unemployment tax if a State has not entered into or has not fulfilled its commitments under a cooperative agreement.

TRADE ADJUSTMENT ASSISTANCE PROGRAM FOR FIRMS

Sections 251 through 264 of the Trade Act of 1974, as amended, contain the procedures, eligibility requirements, benefits and their terms and conditions, and administrative provisions of the trade adjustment assistance program for firms adversely impacted by increased import competition. Administration of the program was transferred in 1982 within the Department of Commerce from the Economic Development Administration to the International Trade Administration. Amendments in 1986 under the COBRA eliminated financial assistance (direct loan or loan guarantee) benefits, increased government participation in technical assistance, and expanded the criteria for firm certification.

Program benefits now consist of technical assistance for petitioning firms which qualify under a two-step procedure: (1) certification by the Secretary of Commerce that the petitioning firm is eligible to apply, and (2) approval by the Secretary of Commerce of the application by a certified firm for benefits, including the firm's proposal for economic adjustment.

To certify a firm as eligible to apply for adjustment assistance, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm have decreased absolutely, or sales and/or production that accounted for at least 25 percent of total production or sales of the firm during the 12 months preceding the most recent 12-month period for which data are available have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm have "contributed importantly" to both the layoffs and the decline in sales and/or production.

The 1988 amendments expanded potential eligibility coverage of the program to include firms that engage in exploration or drilling for oil or natural gas. Unlike the worker program, this extension applies only prospectively after August 23, 1988. If an import fee is subsequently imposed (as described below), the OCTA further extends certification eligibility coverage one year thereafter to firms in any industry that supply "essential goods or essential services" to firms adversely affected by increased imports.

A certified firm may file an application with the Secretary of Commerce for trade adjustment assistance benefits at any time within 2 years after the date of the certification of eligibility. The application must include a proposal by the firm for its economic adjustment. The Secretary may furnish technical assistance to the firm in preparing its petition for certification and/or in developing a viable economic adjustment proposal.

The Secretary approves the firm's application for assistance only if he determines that its adjustment proposal (a) is reasonably calculated to make a material contribution to the economic adjustment of the firm; (b) gives adequate consideration to the interests of the workers in the firm; and (c) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

Benefits

Technical assistance may be given to implement the firm's economic adjustment proposal in addition to, or in lieu of, precertification assistance or assistance in developing the proposal. It may be furnished through existing government agencies or through private individuals, firms, and institutions (including private consulting services), or by grants to intermediary organizations, including regional Trade Adjustment Assistance Centers. As amended by the COBRA, the Federal Government may bear the full cost of technical assistance to a firm in preparing its petition for certification. However, the Federal share cannot exceed 75 percent of the cost of assistance furnished through private individuals, firms, or institutions for developing or implementing an economic adjustment proposal. Grants may be made to intermediate organizations to defray up to 100 percent of their administrative expenses in providing technical assistance.

As amended in 1984, the Secretary of Commerce also may provide technical assistance of up to $10 million annually per industry to establish industrywide programs for new product or process development, export development, or other uses consistent with adjustment assistance objectives. The assistance may be furnished through existing agencies, private individuals, firms, universities, and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit organizations of industries in which a substantial number of firms or workers have been certified.

Funding

Funds to cover all costs of the program are subject to annual appropriations to the International Trade Administration of the Department of Commerce from general revenues.

Import Fee and Trust Fund

Section 1428 of the OCTA requires the President to undertake negotiations under the General Agreement on Tariffs and Trade (GATT) and with parties to bilateral free trade areas to allow any country to impose a small uniform fee not to exceed 0.15 percent ad valorem on all imports to such country to fund programs which directly assist adjustment to import competition. The fee would be imposed on all U.S. imports (with certain limited exceptions) at a uniform rate equal to the cost of the worker and firm TAA programs or 0.15 percent ad valorem, whichever is less, 30 days after the President certifies to Congress there is GATT agreement. The President shall proclaim an import fee in the absence of GATT agreement if such agreement has not been reached within 2 years (by August 23, 1990), unless the President determines and notifies Congress that imposition of the fee is not in the national economic interest, or if such a determination is overridden by Congress by enactment of a joint disapproval resolution passed within 90 days after the 2-year period under expedited procedures.

If the import fee is imposed, the worker and firm TAA programs would be funded from a newly created trust fund financed from quarterly transfers of general revenues equivalent to amounts attributable to the import fee. The amount equivalent to the maximum level of the import fee of 0.15 percent ad valorem would constitute an overall ceiling on total expenditures for the worker and firm TAA programs, as well as a "cap" on the total benefit entitlement for workers. Within that overall "cap", a second "cap" of $120 million would apply to worker training entitlement costs. Funding for the worker TAA program would continue to be an appropriated entitlement; firm TAA would continue to be a discretionary program subject to appropriations.

Chapter 3: OTHER LAWS REGULATING IMPORTS

Authorities To Restrict Imports of Agricultural and Textile Products

Section 204 of the Agricultural Act of 1956, as amended

Section 204 of the Agricultural Act of 1956, as amended,[1] authorizes the President to negotiate agreements with foreign governments to limit their exports of agricultural or textile products to the United States. The President is authorized to issue regulations governing the entry of products subject to international agreements concluded under this section. Furthermore, if a multilateral agreement is concluded among countries accounting for a significant part of world trade in the articles concerned, the President may also issue regulations governing entry of those same articles from countries which are not parties to the multilateral agreement.

The authority provided under section 204 has been used to negotiate bilateral agreements restricting the exportation of certain meats to the United States,[2] as well as to implement an agreement with the European Communities (EC) restricting U.S. importation of certain cheeses from the EC.[3] Section 204 also provides the legal basis for the GATT Arrangement Regarding International Trade in Textiles, commonly referred to as the Multifiber Arrangement,[4] and for U.S. bilateral agreements with 38[5] textile-exporting nations.

MULTIFIBER ARRANGEMENT (MFA)

The Multifiber Arrangement (MFA) is a multilateral agreement negotiated under the auspices of the GATT. The MFA provides a general framework and guiding principles for the negotiation of bilateral agreements between textile importing and exporting countries, or for unilateral action by an importing country if an agreement cannot be reached. In effect since 1974, the MFA was established to deal with problems of market disruption in textile trade, while permitting developing countries to share in expanded export opportunities.

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[1] Public Law 84-540, ch. 327, approved May 28, 1956, 70 Stat. 200, as amended by Public Law 87-488, approved June 19, 1962, 76 Stat. 104, 7 U.S.C. 1854.

[2] Exec. Order No. 11539, June 30, 1970, 35 Fed. Reg. 10733, as amended by Exec. Order No. 12188, Jan. 2, 1980, 45 Fed. Reg. 989. See discussion of Meat Import Act of 1979, infra.

[3] Exec. Order No. 11851, April 10, 1975, 40 Fed. Reg. 16645.

[4] Arrangement Regarding International Trade in Textiles, T.I.A.S. 7840 (1973) (expires 1991).

[5] In force as of August 1, 1989.

Background

The first voluntary agreement to limit exports of cotton textiles to the United States as negotiated with Japan in 1957. Through the 1950's cotton textile imports, especially from Japan, continued to increase and generate pressure for import restraints. In 1956, the Congress passed the Agricultural Act of 1956 which, among other things, provided negotiating authority for agreements restricting imports of textile products. Pursuant to this authority, the United States negotiated a 5-year voluntary restraint agreement on cotton textile exports from Japan, announced in January 1957.

As textile and apparel imports from low-wage developing countries began to rise, pressure mounted for a more comprehensive approach to the import problem. On May 2, 1961, President Kennedy announced a Seven Point Textile Program, one point of which called for an international conference of textile importing and exporting countries to develop an international agreement governing textile trade. On July 17, 1961, a textile conference was convened under the auspices of the GATT. The discussions culminated in the promulgation of the Short-Term Arrangement on Cotton Textile Trade (STA) on July 21, 1961.[6] The STA covered the year October 1, 1961, to September 30, 1962, and established a GATT Cotton Textiles Committee to negotiate a long-range cotton textile agreement.

From October 1961 through February 1962, the STA signatories met in Geneva and negotiated a Long-Term Arrangement for Cotton Textile Trade (LTA), to last for 5 years beginning October 1, 1962.[7] The LTA provided for negotiation of bilateral agreements between cotton textile importing and exporting countries, and for imposition of quantitative restraints on particular categories of cotton textile products from particular countries when there was evidence of market disruption. In June of 1962, section 204 of the Agricultural Act of 1956 was amended to give the President authority to control imports from countries which did not sign the LTA.[8]

In the fall of 1965 the LTA was reviewed, and criticism within the U.S. textile industry mounted with respect to the LTA's failure to cover man-made fiber textiles. In 1967, however, the LTA was extended for 3 additional years with no additional fiber coverage. In 1970, the LTA was again extended for 3 more years.

Meanwhile, multifiber agreements limiting imports not only of cotton but also of wool and man-made fiber textiles were negotiated by the Nixon administration on a bilateral basis. On October 15, 1971, bilateral multifiber agreements were announced with Japan, Hong Kong, South Korea, and Taiwan. A multilateral agreement, incorporating the provisions of the bilaterals with Hong Kong, South Korea, and Taiwan, was also signed to allow the United States the authority, under section 204 of the Agricultural Act of 1956 as amended in 1962, to impose quantitative restrictions unilaterally on non-signatory countries.

The following year, in June 1972, efforts to negotiate a multifiber agreement on a broader multilateral basis led to the establishment of a GATT working party to conduct a comprehensive study of conditions of world trade in textiles. The working group submitted its study to the GATT Council early in 1973. In the fall of that year, multilateral negotiations for a multifiber agreement began after passage of a 3-month extension of the LTA. The first Multifiber Arrangement (MFA I) was concluded on December 20, 1973, and came into force January 1, 1974.

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[6] T.I.A.S. 4884 (1961) (expired 1962).

[7] T.I.A.S. 5240 (1962) (expired 1973).

[8] Public Law 87-488, approved June 19, 1962, 76 Stat. 104.

MFA provisions

The MFA was modeled after the LTA and provides for bilateral agreements between textile importing and exporting nations (Article 4) and for unilateral actions following a finding of market disruption (Article 3).[9] Quantitative restrictions are to be based on past volumes of trade, with the right, within certain limits, to transfer the quota amounts between products and between years. The MFA also provides generally for a minimum annual growth rate of 6 percent.[10] Quotas already in place had to be conformed to the MFA or abolished within a year. The products covered by MFA I, II, and III included all manufactured products whose chief value is represented by cotton, wool, man-made fibers or a blend thereof. Also included were products whose chief weight is represented by cotton, wool, man-made fibers or a blend thereof. MFA IV expanded product coverage to include products made of vegetable fibers such as linen and ramie, and silk blends as well.

A Textile Surveillance Body (TSB) was established to supervise the implementation of the MFA. The TSB is composed of a chairman and eight members from among the MFA signatories chosen by the GATT Textiles Committee. The TSB receives notification of all actions taken and agreements concluded under the MFA, examines them for conformity with the MFA, discusses those in dispute with the principals involved, and offers, where appropriate, nonbinding recommendations to the governments involved. It reports at least annually to the GATT Textiles Committee.

MFA I was in effect for 4 years, until the end of 1977. During MFA renewal negotiations in July 1977 the EC succeeded in putting in the renewal protocol a provision allowing jointly agreed "reasonable departures" from the MFA requirements in negotiating bilateral agreements. The MFA was then renewed for 4 more years.[11]

MFA II was in effect through December 1981. On December 22, 1981, a protocol was initialed extending the MFA for an additional four and a half years, and providing a further interpretation of MFA requirements in light of 1981 conditions.[12] MFA III expired on July 31, 1986. MFA IV, currently in force, went into effect on August 1, 1986, and will expire on July 31, 1991.

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[9] Market disruption exists when domestic producers are suffering "serious damage" or the threat thereof. Factors to be considered in determining whether the domestic producers are seriously damaged include: turnover, market share, profit, export performance, employment, volume of disruptive and other imports, production, utilization of capacity, productivity, and investments. Such damage must be caused by a sharp, substantial increase of particular products from particular sources which are offered at prices substantially below those prevailing in the importing country.

[10] The annual growth rate applies to overall levels of imports from a particular supplier country. Higher or lower growth rates can apply to particular products, as long as the overall growth rate with respect to that supplier country is 6 percent.

[11] T.I.A.S. 8939 (1977).

[12] T.I.A.S. 10323 (1981).

BILATERAL TEXTILE AGREEMENTS

Under the authority of section 204 of the Agricultural Act of 1956, as amended, and in conformity with the MFA, the President has negotiated bilateral agreements restricting textile exports from various supplier countries. There are 38 such bilateral agreements currently in force [13] The agreements apply to textile products, covering not only fiber and fabric, but apparel as well.

The terms of each bilateral agreement are worked out through negotiation. The life of an agreement ranges from 3 to 6 years. Each agreement contains flexible, specific, and/or aggregate limits with respect to the type and volume of textile products that the supplier country can export to the United States. Limits are set in terms of square meter equivalents (SME's). The MFA allows, under certain conditions, for carryover (from the prior year to current year within the same product category), carryforward (from the subsequent year to the current year within the same product category), and swing (from one product category to another product category within the same year) of unused portions of quotas. These provisions may be applied only with respect to specific import limits set forth in the bilateral agreement. Each agreement also provides for adjustment of import levels in accordance with specified growth rates. Some of the bilaterals provide for an export control system to be administered by the exporting country to assure compliance with the terms of the agreement.

Consultation levels apply to categories which do not have specific limits. Once imports in a particular category reach the consultation level, the U.S. Government requests or "calls" for consultations to control imports in that product category. If consultations fail to produce an agreement on restrictive levels, and the United States is able to demonstrate that such imports are causing market disruption, then the United States may take unilateral action, such as an embargo, to restrict further imports in that product category.

The Committee for Implementation of Textile Agreements (CITA) is responsible for administering the bilateral textile agreements program. [14] CITA is composed of representatives from the Departments of Commerce, State, Labor, and Treasury, and the Office of the U.S. Trade Representative. The Commerce Department official is chair of the committee, and heads the Office of Textiles and Apparel (OTEXA) in the Department of Commerce which implements the terms of the agreements and decisions made by CITA. A primary function of CITA is to monitor imports and to determine when calls for consultations are to be made.

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[13] As of August 1, 1989.

[14] Exec. Order 11651, 3 CFR 676 (1971-75 Comp.).

Fees and Quotas Under Section 22 of the Agricultural Adjustment Act of 1933

Section 22 of the Agricultural Adjustment Act of 1933, as amended,[15] authorizes the President to impose fees or quotas on imported products that undermine any U.S. Department of Agriculture (USDA) domestic commodity program. This authority, which has existed in some form since 1935,[16] is designed to prevent imports from interfering with USDA efforts to stabilize or raise domestic agricultural commodity prices.

The protection of farm income has long been considered essential to assure the nation balanced and adequate supplies of food and fiber. A fundamental element of U.S. agricultural policy, therefore, has been the stabilization and support of farm prices. The Congress has mandated minimum support prices for some of the major storage farm commodities; discretionary support authority exists for other commodities; and in other cases, particularly for perishable products, growers are authorized to regulate marketing in their product sectors.

When world commodity prices are lower than domestic support prices, imports may enter the U.S. market in increasing quantities, and undercut domestic support prices. Consequently, either the USDA must remove larger quantities from the market or farmers must make sharper cuts in production. The negative effect that imports can have on the USDA's commodity price support programs provided the basis for enactment of import control authority in 1935. Section 31 of the Act of August 24, 1935 added section 22 to the Agricultural Adjustment Act of 1933. Since its enactment in 1935, section 22 has been amended several times.

BASIC PROVISIONS

Under section 22, the Secretary of Agriculture is directed to advise the President when the Secretary has reason to believe that imports of any article "render or tend to render ineffective, or materially interfere with" any USDA price support or similar agricultural program, or "reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof" which is the subject of an agricultural program. Such determination is usually based on USDA activities in monitoring imports, although private parties can request the Secretary to take action pursuant to this section.

If the President agrees that there is reason for such belief, he must order an investigation of the situation by the International Trade Commission (ITC). The ITC must give precedence to such investigation, and report its findings along with recommendations for action to the President.

Based on the ITC report, the President must determine whether the conditions specified in the statute exist. If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees or import quotas sufficient to prevent imports of that product from harming or interfering with the relevant price support program. Any import fee imposed, however, may not exceed 50 percent ad valorem. Any import quota imposed may not exceed 50 percent of the quantity imported during a representative period, as determined by the President. These ceilings are statutorily set, and may not be exceeded even if, after imposition of fees or quotas, imports continue to enter the United States in such quantities as to interfere with any agricultural program. In designating the articles subject to such a fee or quota, the President may describe them by physical qualities, value, use, or any other basis.

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[15] Act of May 12, 1933, ch. 25, title I, 48 Stat. 31, as amended by Public Law 74-320, section 31, 49 Stat. 773 and section 301 of Public Law 100-449, 102 Stat. 1851, 1865, 7 U.S.C. 624.

[16] Section 22 was added by section 31 of the Act of August 24, 1935, Public Law 74-320, 49 Stat. 773.

If the Secretary of Agriculture determines and reports to the President that emergency action is needed, the President may take immediate interim action without awaiting a report by the ITC. Such interim action will continue in effect until the President acts on the ITC report.

Any decision of the President as to facts under section 22 is final. The President may modify, suspend, or terminate any fees or quotas imposed after an ITC investigation and report and a Presidential determination that changed circumstances require modification, suspension or termination.

RELATIONSHIP TO INTERNATIONAL AGREEMENTS AND OTHER LAWS

The provisions of section 22 supersede any inconsistent provisions of international agreements entered into by the United States.[17] The use of section 22 quotas is inconsistent with Articles II and XI of the GATT. (Article II prohibits unequal treatment of trading partners, and Article XI forbids the use of quantitative import restrictions). To remedy the inconsistency between section 22 and the GATT, the United States sought and received a waiver of the provisions of Articles II and XI in 1955.[18]

Fees and quotas established under section 22 are not affected by duty-free status granted under the Generalized System of Preferences or the Caribbean Basin Initiative. There are no provisions under section 22 for exclusion or preference of products from specific countries, except in accordance with the U.S.-Canada Free-Trade Agreement (FTA). Quotas imposed under the section are usually allocated among supplying countries in accordance with each country's proportionate market share during a previous representative period.

In 1988, section 22 was amended to authorize the President to exempt certain products of Canada from any import restrictions imposed under that section.[19] This statutory amendment is limited to the provisions of articles 705 and 707 of the U.S.-Canada FTA, relating to import restrictions on grain and grain products and sugar-containing products. Under article 705 of the FTA, the United States and Canada reserved their rights to impose quantitative restrictions or import fees on imports of specified grains or grain products when imports of the particular grain increase significantly as a result of a substantial change in the U.S. or Canadian support programs for that grain. Article 707 prohibits the United States from imposing import quotas or fees on Canadian products containing 10 percent or less sugar by dry weight for the purpose of restricting the sugar content of such products.

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[17] 7 U.S.C. 624(f).

[18] Decision of 5 March 1955 as reported in the Basic Instruments and Selected Documents, Third Supplement, General Agreement on Tariffs and Trade, Geneva, June 1955.

[19] Section 301 of Public Law 101-449, approved September 28, 1988.

APPLICATION

Since its enactment in 1935, section 22 has been used to impose import controls on 12 different commodities or groups of commodities: (1) wheat and wheat flour; (2) rye, rye flour, and rye meal; (3) barley, hulled or unhulled, including rolled, ground, and barley malt; (4) oats, hulled or unhulled, and unhulled ground oats; (5) cotton, certain cotton wastes, and cotton products; (6) certain dairy products; (7) shelled almonds; (8) shelled filberts; (9) peanuts and peanut oil; (10) tung nuts and tung oil; (11) flaxseed and linseed oil; and (12) sugars and sirups and sugar-containing products. Section 22 fees and quotas have since been terminated for most of these commodities. At the current time, however, import controls are in place to protect cotton, certain dairy products, peanuts, sugar, and sugar-containing products. The fees and quotas applicable to imported products under section 22 are specified in section XXII of the Harmonized Tariff Schedule of the United States.

Meat Import Act of 1979

The Meat Import Act of 1979, as amended,[20] requires the President to impose quotas on imports of beef, veal, mutton, and goat meat when the aggregate quantity of such imports on an annual basis is expected to exceed a prescribed trigger level. The predecessor statute of the Meat Import Act of 1979 was the Meat Import Act of 1964,[21] which provided similar authority to the President to impose quotas on meat imports, based on a different formula.

Background

In 1964, the U.S. cattle industry was facing depressed economic conditions, and sought relief from increasing import competition. The Johnson Administration that year negotiated voluntary restraint agreements with Australia, New Zealand, Ireland and Mexico with respect to their exports of meat to the United States. Pressure for import quotas continued, however, and during the summer of 1964, the Meat Import Act of 1964 was passed by Congress and signed by President Johnson.

The Meat Import Act of 1964 required the President to impose quotas on imports of meat from cattle, goats and sheep whenever the Secretary of Agriculture determined that, without quotas, imports would equal or exceed a specified trigger level. The trigger was based on the average annual level of meat imports between 1959 and 1963, plus 10 percent, adjusted upward by the percentage increase, or downward by the percentage decrease, in domestic commercial production of these meats since the 1959–63 period. The President could suspend or raise the quotas, however, for overriding economic or national security interests, or for reasons of inadequate domestic supply.

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[20] Public Law 96-177, approved December 31, 1979, 93 Stat. 1291, as amended by section 301 of Public Law 100-449, approved September 28, 1988, 102 Stat. 1851, 1865, 19 U.S.C. 1202.

[21] Public Law 88-482, approved August 22, 1964.

The provisions of the 1964 law were expected to help raise domestic meat prices and thus help revive the domestic cattle industry. In the years following enactment, however, domestic cattle prices remained low.[22] Moreover, until 1976 no quotas were imposed on meat imports. During many years the level of expected meat imports for that year fell below the trigger level. During other years, the Federal Government either negotiated voluntary restraint agreements with foreign suppliers, or suspended the required quotas due to "over-riding economic interests" simultaneously with their proclamation. In October of 1976 a quota was imposed on meat from Canada, but the quota was terminated at the end of that same year.

By the late 1970's U.S. livestock producers had stepped up efforts to strengthen the 1964 law. These efforts culminated in the passage of the Meat Import Act of 1979. Congress passed the Act on December 18, 1979, and December 31, 1979, President Carter signed it into law.

Basic provisions

The Meat Import Act of 1979 requires the President to impose a quota on imports of beef, veal, mutton, and goat meat when the aggregate quantity of such imports is expected to exceed an adjusted base quantity by 10 percent or more, on an annual basis. The trigger level, setting off quotas, is thus 110 percent of the adjusted base quantity.

From 1979 through March 1989, the base quantity has been statutorily set at 1,204,600,000 pounds. The base quantity is adjusted annually by a countercyclical formula which allows more imports when domestic supplies are low, and less imports when domestic supplies are abundant. The formula multiplies the base quantity by the ratio of average annual per capita production of domestic cow beef during the current and previous four calendar years to average annual per capita production of domestic cow beef in the current and immediately preceding year.

In the free trade agreement that the United States and Canada signed in January 1988, the two nations agreed to exempt each other from import quotas applied under their respective meat import laws.[23] As a result, the 1.204 billion pound base quantity set by the 1979 meat import law was reduced on April 1, 1989, to reflect the deletion of Canada's historic share of that figure. The adjusted base quantity and trigger levels for 1989 will then be recalculated.

Except for the change in the base quantity, the other provisions of the 1979 law remain the same. Estimates of the adjusted base quantity and expected imports are required on a quarterly basis. When expected annual imports reach the trigger level, the President is required to impose a quota set at 110 percent of the adjusted base quantity. However, the statute provides that import quotas may never be less than 1.25 billion pounds annually.

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[22] By the early 1970's farm prices for beef improved for a short time, but profits were again depressed after 1973 by overexpansion, rising production costs, and a decline in domestic consumption.

[23] U.S. meat producers may still petition the U.S. International Trade Commission to impose countervailing duties on meat imports from Canada if they think that subsidized imports are injuring the U.S. industry.

Any quota imposed must be allocated among supplying countries on the basis of their historic shares of the U.S. market, and would cover all articles included in the calculation of the adjusted base quantity.

A quota imposed under this Act may be suspended or raised by the President, if, after giving notice and providing opportunity for comment, he determines one of the following:

(1) suspension or increase is required by overriding economic or national security interests of the United States;

(2) domestic supply of such meat will be inadequate to meet domestic demand at reasonable prices; or

(3) trade agreements entered into force after date of enactment ensure that policy set forth will be carried out.

Additional conditions must be met prior to suspension or increase if the cattle cycle at that time is in the herd liquidation phase and domestic beef production is relatively high.

Application

No quota has yet been imposed under the Meat Import Act of 1979. In 1980 and 1981, imports remained under the trigger level. In 1982 and 1983, when imports threatened to exceed the annual triggers of 1.3 billion and 1.231 billion pounds, respectively, voluntary restraint agreements (VRA's) were negotiated limiting imports from Australia, New Zealand, and Canada, thereby avoiding imposition of quotas. Meat imports in 1984, 1985, and 1986 did not reach the trigger levels of 1.228 billion pounds, 1.32 billion pounds, and 1.44 billion pounds, respectively.

The trigger level for 1987 was 1.44 billion pounds. Voluntary restraint agreements were negotiated with Australia and New Zealand, but because this was done very late in the year, and some pre-VRA shipments of meat were already in transport, imports slightly in excess of the trigger entered the United States (1.460 billion pounds).

The 1988 trigger was 1.525 billion pounds, and VRA's were negotiated again with Australia and New Zealand, resulting in a final meat import figure of 1.521 billion pounds. The 1989 trigger is 1.438 billion pounds, but USDA announced an adjusted lower figure on April 1, reflecting the removal of Canada from the statutory base quantity. Regardless, meat imports are not expected to approach the trigger level in 1989.

Reciprocal Meat Inspection Requirement: Section 20(h) of the Federal Meat Inspection Act

Section 4604 of the Omnibus Trade and Competitiveness Act of 1988 [24] amends section 20 of the Federal Meat Inspection Act (21

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[24] Public Law 100-418, approved August 23, 1988, 102 Stat. 1107, 1408, amending section 20 of Public Law 90-201, 21 U.S.C. 620.

U.S.C. 620) to authorize strict enforcement of all standards which are applicable to meat articles in domestic commerce, for meat articles imported into the United States. If the Secretary of Agriculture determines that a foreign country applies meat inspection standards that are not related to public health concerns about end-product quality which are substantiated by reliable analytical methods, the Secretary must consult with the United States Trade Representative and they shall make a recommendation to the President as to what action should be taken. The President may require that a meat article produced in a plant in such foreign country may not be permitted entry into the United States unless the Secretary determines that the meat article has met the standards applicable to meat articles in commerce within the United States. The annual report required generally under section 20 of the Federal Meat Inspection Act shall include the name of each foreign country that applies standards for the importation of meat articles from the United States that are not based on public health concerns.

Enactment of this provision resulted from congressional concern over the European Community's (EC) hormone ban, which effectively banned all meat exports from the United States to the EC that were treated with hormones, despite scientific evidence establishing the safety of U.S. production methods. At the time of enactment, bilateral consultations with the EC were underway, and Congress wanted to strengthen the Administration's authority to respond to the EC action. The authority added by section 4604 was intended to be used either in addition to, or instead of, other authorities (such as section 301 of the Trade Act of 1974).

Sugar Quotas Under Harmonized Tariff Schedule Authorities

Additional U.S. Note 3 of Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) provides the authority to establish an annual quota for imports of sugars, syrups and molasses described in HTS Headings 1701.11, 1701.12, 1701.91, and 1701.99.[25] This authority was created in 1967[26] to carry out a provision in the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade containing the results of the Kennedy Round of Multilateral Trade Negotiations.[27]

Background

The United States historically imported between 33 and 55 percent of its sugar needs, making it one of the world's largest sugar importers. At the same time, it has been this nation's policy to maintain its own sugar industry, even when world prices are substantially below production costs in the United States. A quota on sugar imports (including syrups and molasses) has been a common characteristic of U.S. sugar policy since 1934.

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[25] Sugar imported for refining and reexportation, or for use in the production of polyhydric alcohols, is exempt from the quota. Pres. Proc. 5002, Nov. 30, 1982, 47 Fed. Reg. 54269, 48 Fed. Reg. 29824.

[26] Pres. Proc. 3822, Dec. 16, 1967, 82 Stat. 1455.

[27] Note 1 of Unit A, Chapter 10, Part 1 of Schedule XX; 19 U.S.T., Part II, 1282.

Sugar quota authority was first contained in sugar price support legislation in 1934. The Jones-Costigan Act of 1934 [28] imposed a quota on sugar imports partly in response to the failure of high tariffs to solve a problem of low domestic sugar prices. The Sugar Act of 1937 [29] renewed and revised the sugar program and this legislation continued to be extended until replaced by the Sugar Act of 1948.[30] The 1948 legislation was amended and repeatedly extended until, failing renewal, it expired in 1973.

Authority to impose and to modify sugar quotas was classified in the Tariff Schedule of the United States in 1967. Subsequently, the sugar quota headnote authority was incorporated into the Harmonized Tariff Schedule in 1989.

Application

A restrictive quota on sugar imports was imposed by President Reagan on May 5, 1982.[31] The quota is allocated on a country-by-country basis among supplying countries in accordance with their historic shares of the U.S. market.[32] In order to facilitate the orderly importation of sugar during the quota year, a system has been established that permits sugar from participating countries to enter the United States only if such imports are accompanied by certificates of eligibility.[33]

The quota for calendar year 1989 was announced on December 15, 1988, and is set at 1,125,255 metric tons. The 1989 quota is slightly higher than the previous year but is 72 percent lower than the average 4 million metric ton import level during 1975–81 (the period when there were no import quotas). The sizable reduction in sugar imports is the result of a continued increase in domestic sweetener production (including corn sweeteners), a decline in domestic consumption of cane and beet sugar, and the no-net-cost requirement of the Food Security Act of 1985 with respect to the domestic sugar price support program. In 1987, the import quota was 910,306 metric tons, the lowest level in nearly 100 years of sugar imports. The 1989 quota is allocated among supplier countries as follows:

SUGAR QUOTA ALLOCATIONS BY COUNTRY
CALENDAR YEAR 1989

Country	Percentage share	Metric tons, raw value
Dominican Republic	17.6	185,328
Philippines [1]	15.8	166,374
Brazil	14.5	152,685
Australia	8.3	87,399

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[28] Public Law 73-213, ch. 263, approved May 9, 1934, 7 U.S.C. 608–620.

[29] Public Law 75-414, ch. 898, approved September 1, 1937, 7 U.S.C. 1100–1137.

[30] Public Law 80-388, ch. 519, approved August 8, 1948, 7 U.S.C. 1100–1160.

[31] Pres. Proc. 4941, May 5, 1982, 47 Fed. Reg. 34777.

[32] The allocation is determined by taking the average of each country's sugar exports to the United States between 1975 and 1981, eliminating the highest and lowest levels, and computing this as a percent of the total quota.

[33] See Pres. Proc. 4941, May 5, 1982, 47 Fed. Reg. 34777.

SUGAR QUOTA ALLOCATIONS BY COUNTRY, CALENDAR YEAR 1989—Continued

Country	Percentage share	Metric tons, raw value
Guatemala	4.8	50,544
Argentina	4.3	45,279
Peru	4.1	43,173
Panama [3]	2.9	30,537
El Salvador [2]	2.6	30,378
Colombia	2.4	25,272
Costa Rica [2]	1.5	20,795
Honduras [2]	1.0	19,197
Swaziland	1.6	16,848
Thailand	1.4	14,742
Mozambique	1.3	13,689
Guyana	1.2	12,636
Taiwan	1.2	12,636
Zimbabwe	1.2	12,636
Mauritius [4]	1.1	12,636
Belize	1.1	11,583
Canada	1.1	11,583
Ecuador	1.1	11,583
Jamaica	1.1	11,583
Malawi [4]	.7	10,530
Fiji[4]	.7	9,477
Bolivia	.8	8,424
India	.8	8,424
Barbados	.7	7,444
Trinidad-Tobago	.7	7,444
Other specified countries and areas (including Congo, Gabon, Haiti, Cote D'Ivoire, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Christopher, and Uruguay) are allowed a minimum quantity of 7,258, which exceeds the percent share	.3	72,580
Base quota	100.0	1,053,000
Speciality sugars		1,815
Adjustments		70,440
Total import quota		1,125,255

[1] The Philippines was reallocated South Africa's quota in 1986.

[2] The quota tonnages for El Salvador, Costa Rica, and Honduras have been increased to account for reallocations of the sugar quota previously allocated to Nicaragua.

[3] Panama's quota is not allowed to be shipped until constitutional guarantees are restored. The quota may be reallocated to other countries.

[4] The quota tonnages for Fiji, Malawi, and Mauritius have been increased to correct statistical events made in the calculation of their percentage shares.

Source: December 15, 1988, press releases of U.S. Department of Agriculture and U.S. Trade Representative.

Import Prohibitions on Certain Agricultural Commodities Under Marketing Orders

Section 8e of the Agricultural Adjustment Act, as amended,[34] prohibits the importation of certain specified commodities which do not meet relevant grade, size, quality or maturity requirements imposed under the marketing order in effect for such commodity. The specified commodities include tomatoes, raisins, olives, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, and eggplants.

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[34] 7 U.S.C. 608e-1

Any prohibition under this authority may not be made effective until after the Secretary of Agriculture gives reasonable notice (of not less than three days). The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provision of this section.

Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commmodity, he must establish with respect to the imported commodity such grade, size, quality, and maturity restrictions by varieties, types, or other classification as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order.

Section 4603 of the Omnibus Trade and Competitiveness Act of 1988 amended section 8e to provide additional authority for the Secretary to establish an additional period of time (not to exceed 35 days) for restrictions to apply to imported commodities, if the Secretary determines that such additional period of time is necessary to effectuate the purposes of the Act and to prevent the circumvention of the requirement of a seasonal marketing order. In making this determination, the Secretary must consider: (1) the extent to which imports during the previous year were marketed during the period of the marketing order and such imports did not meet the requirements of the marketing order; (2) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order; and (3) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

International Commodity Agreements

International commodity agreements are multilateral agreements signed by producing and consuming countries to influence the international trade of a primary commodity (agricultural, mineral, or metal). There are three types: (1) those designed to stabilize the price and supply of a commodity on world markets; (2) those that act as study groups for a commodity, collecting statistics and providing a forum for inter-governmental consultations; and (3) those that act as study groups plus undertake market development activities to increase demand for the commodity. A central organization administers the agreement for its members.

Congress approves U.S. membership in all three types of agreements either through the line item for international organizations of the U.S. State Department budget or, in stabilization agreements, with implementing legislation. The United States is currently a party to a number of international commodity agreements. The International Sugar Agreement and the International Wheat Agreement are examples of study group agreements. They collect trade information on the commodity, and, in periodic meetings, provide forums for international policy coordination. The International Jute Agreement and the International Tropical Timber Agreement are examples of a study group that also takes on projects to improve the demand for its commodity. The jute agreement organization attempts to improve the productivity of jute producers and to find new end uses for jute. The tropical timber organization, in addition to collecting trade information, focuses on deforestation issues.

The International Coffee Agreement is an example of a stabilization type of commodity agreement. Implementing legislation for the International Coffee Agreement of 1983 was passed by Congress in 1983 for a period of three years,[35] and then subsequently extended until 1989.[36]

INTERNATIONAL COFFEE AGREEMENT

The current 1983 International Coffee Agreement will expire September 31, 1989. It is the fourth in a series of agreements that attempted to stabilize the price of coffee within an agreed upon price range through export quotas. The 1983 agreement was signed by 73 countries representing 95 percent of the exporting nations and 86 percent of the importing nations by volume of trade. The United States, as the world's largest coffee-consuming nation, supports this agreement. The Senate unanimously ratified the agreement in July 1983 [37] and in September 1983 Congress passed implementing legislation.[38]

The ICA uses a system of country export quotas. Exporting countries release specific amounts of coffee onto world markets each year. These amounts decrease when world prices decline and increase when prices are within an agreed range. In a period of high prices, quotas are suspended altogether in order to encourage maximum exports. The quota system is enforced by the importing members, such as the United States. The Agreement itself contains no fixed price objective; rather, each year the members of the Agreement establish a price range based on current production and consumption trends, inventory levels, and other factors that influence the market. And every two years, member nations agree on a global quota, as well as country shares of the global quota.

Steel Import Stabilization Act

Title VII of the Trade and Tariff Act of 1984, sets forth the provisions of the Steel Import Stabilization Act,[39] which grants the President authority to enforce the terms of bilateral arrangements limiting the export of steel products to the United States. Congress provided this authority in October 1984 in response to President Reagan's decision the previous month to reject a petition for import relief to the domestic steel industry under section 201 of the Trade Act of 1974, and instead to enter into a series of bilateral restraint agreements with steel-exporting nations to reduce their exports of steel to the United States.[40] This program is commonly referred to as the steel VRA program.

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[35] International Coffee Agreement Act of 1983, Public Law 98-120, approved October 12, 1983.

[36] Section 1123 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, approved August 23, 1988, 102 Stat. 1107, 1146, 19 U.S.C. 1356K.

[37] The Senate unanimously ratified the Agreement on July 27, 1983 (Treaty Doc. 98-2). The Committee on Foreign Relations published Executive Report No. 98-11 to accompany the treaty on June 29, 1983.

[38] The International Coffee Agreement Act of 1983, Public Law 98-120, approved October 12, 1983. See also H. Rept. No. 98-376 to accompany H.R. 3813, and S. Rept No. 98-250 to accompany S. 1847.

[39] Public Law 98-573, title VIII, approved October 30, 1984, amended by section 1322 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, approved August 23, 1988.

Background

In January 1984, Bethlehem Steel Corporation and the United Steelworkers of America jointly filed a petition under section 201 of the Trade Act of 1974 for import relief in the form of global quotas on imports of carbon and alloy steel products. In July 1984, in response to this petition, the International Trade Commission (ITC) submitted a report to the President setting forth its findings of serious injury and recommendations of quotas for five out of nine steel product categories.[41] On September 18, 1984 President Reagan announced his decision to deny import relief under section 203 of the Trade Act of 1974, and, instead, to negotiate bilateral restraints with steel-exporting countries to limit U.S. imports of steel, and to pursue a more vigorous policy of enforcement of the laws against unfair trade practices.[42] Based on the series of actions to be taken as part of the new steel trade policy, it was the expectation of the President that steel imports would be reduced to approximately 18.5 percent of the U.S. market, excluding semi-finished steel.[43]

In response to the President's decision, the following week legislation was introduced in the House of Representatives (H.R. 6301) to provide the President with express authority to enforce such bilateral restraint agreements, conditioned on adequate performance by the domestic steel industry in modernizing its plants and providing retraining to its former workers.[44] The Steel Import Stabilization Act, H.R. 6301, was reported favorably by the Committee on Ways and Means on September 27,[45] and passed by the House of Representatives on October 2, 1984. The House then passed H.R. 6301 as an amendment to an omnibus trade bill, H.R. 3398, and it was considered in the House-Senate conference on H.R. 3398. Title VIII of the Trade and Tariff Act of 1984 contains the provisions of the Steel Import Stabilization Act as agreed to by the conference. The provisions of title VIII took effect as of October 1, 1984.

Basic provisions

The Steel Import Stabilization Act provides the President, for up to five years, with authority to enforce the quantitative limitations, restrictions, and other terms agreed to in bilateral restraint arrangements between the United States and steel-exporting nations. The enforcement authority is broad in scope, authorizing the President "to carry out such actions as may be necessary or appropriate," including, but not limited to, requiring presentation of valid export licenses or other documentation as a condition of entry, into the United States. The defintion of "bilateral arrangements" provided in the Act is also intentionally broad, and refers to any arrangement, agreement, or understanding (including, but not limited to, any surge control understanding or suspension agreement) between the United States and any foreign country containing quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of steel products.

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[40] Exec. Comm. 4046, September 18, 1984 (H. Doc. 98-263).

[41] Report to the President on Investigation No. TA-201-51, USITC Pub. No. 1553, July 1984.

[42] Exec. Comm. 4046, September 18, 1984 (H. Doc. 98-263).

[43] After expected imports of semi-finished steel are factored in, the import market share that was expected by the President's policy equalled 20.2 percent of the U.S. market.

[44] H.R. 6301 was introduced on September 25, 1984 by Congressman Dan Rostenkowski (D-Ill).

[45] House Report 98-1089.

The Act provides the Secretary of Commerce specifically with authority to enforce restrictions on exports to the United States of steel pipes and tubes from the European Communities (EC) in accordance with the terms of the U.S.-E.C. Arrangement on Pipes and Tubes. This authority is specifically granted to the Secretary of Commerce in light of the Secretary's current responsibilities for enforcement of the U.S.-E.C. Arrangement on Basic Carbon Steel Products.

The enforcement authority provided by the Act is limited in duration to a maximum of 5 years, and is subject to annual renewal within the 5-year period. In order for the enforcement authority to renew for an additional year, the President must submit in writing prior to the anniversary date an affirmative determination to the House Committee on Ways and Means and Senate Committee on Finance that certain requirements set forth in the Act have been met. These requirements include the following:

(1) that the major steel companies, taken as a whole, have, during the relevant 12-month period, (a) committed substantially all of their net cash flow from steel operations for purposes of reinvestment in and modernization of their steel operations; and (b) taken sufficient action to maintain their international competitiveness;

(2) that each of the major steel companies committed, during the relevant 12-month period, not less than 1 percent of net cash flow to the retraining of workers, unless the President waives this requirement with respect to a particular company due to unusual economic circumstances; and

(3) that the enforcement authority remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

If the President does not submit an affirmative determination that these conditions have been met, the enforcement authority permanently expires. If the President does submit such an affirmative determination, the enforcement authority renews for an additional year, at which time it would again be subject to the annual determination requirement. This process of annual renewal will continue until the authority is terminated, or until the authority has been in effect for 5 years, whichever is sooner.

The Act also required the Secretary of Labor to prepare, in consultation with the Steel Advisory Committee, and to submit to Congress by April 1, 1985, a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products. Such assistance must include retraining and relocation for former workers in the steel industry who are unlikely to return to work in the industry.

In 1988, two additional provisions were added to the enforcement authority.[46] The first provision, commonly referred to as the "melted and poured" provision, provides discretionary authority to count against a particular VRA country's quota those steel products that were manufactured in a non-VRA country from steel that was melted and poured in such VRA country. The second provision authorizes the USTR to take such action as he deems necessary to ensure the effectiveness of any "third country equity provision" of a bilateral arrangement.

National Security Import Restrictions

Section 232 of the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962, as amended,[47] authorizes the President to impose restrictions on imports which threaten to impair the national security. This authority has been used by the President to impose quotas and fees on imports of petroleum and petroleum products from time to time. Public Law 96-223 (imposing a windfall profit tax on domestic crude oil) amended section 232 to authorize either House of Congress to disapprove an action of the President to adjust oil imports.

Section 232 as amended requires the Secretary of Commerce to conduct immediately an investigation to determine the effects on national security of imports of an article, upon the request of any U.S. Government department or agency, application of an interested party, or upon his own motion. The Secretary must report the findings of his investigation and his recommendations for action or inaction to the President within 270 days after receiving the application or beginning the investigation. If the Secretary finds the article "is being imported in such quantities or under such circumstances as to threaten to impair the national security," he must so advise the President. The President must decide within 90 days after receiving the Secretary's report whether to take action. If the President decides to take action, he must proclaim such action within 15 days, and take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so imports will not threaten to impair the national security. The President must submit a written statement to the Congress within 30 days explaining the action taken and the reasons therefor.

Upon initiation of an investigation, the Secretary of Commerce must immediately notify the Secretary of Defense, and consult with him on methodological and policy questions. Upon request of the Secretary of Commerce, the Secretary of Defense must provide an assessment of the defense requirements of the article subject to investigation.

The Secretary must hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to the investigation if it is appropriate and after reasonable notice. The Secretary must also seek information and advice from, and consult with, other appropriate agencies. Among the factors which the Secretary and the President must consider are domestic production needs for projected national defense requirements; domestic industry capacity to meet these requirements; existing and anticipated availability of resources, supplies, and services essential to the national defense; the growth requirements of such industries, supplies, services; imports in terms of their quantities, availability, character, and use as they affect such industries and U.S. capacity to meet national security requirements; the impact of foreign competition on the economic welfare of domestic industries; and any substantial unemployment, revenue declines, loss of skills or investment, or other serious effects resulting from displacement of any domestic products by excessive imports.

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[46] Section 1322 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, approved August 23, 1988.

[47] Public Law 87-794, approved October 11, 1962, 19 U.S.C. 1351, amended by section 127 of the Trade Act of 1974, Public Law 93-618, sec. 127, approved January 3, 1975, 19 U.S.C. 1862-1863, and further amended by section 1501 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, approved August 23, 1988.

Section 233 of the Trade Expansion Act of 1962

Section 233 of the Trade Expansion Act of 1962 was added by section 121 of the Export Administration Amendments of 1985 (Public Law 99-64) as a means of enforcing national security export controls imposed under that Act. The provision was amended by section 2447 of the Omnibus Trade and Competitiveness Act of 1988, to conform to sanctions authority added to the Export Administration Act.

Under section 233 as amended, any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979, or any regulation, order, or license issued under that section, may be subject to controls imposed by the President on imports of goods or technology into the United States.

Machine tool VRA Enforcement Authority

Section 1501(c) of the Omnibus Trade and Competitiveness Act of 1988 provides specific statutory authority to enforce the restrictions on machine tool imports, as negotiated in bilateral arrangements pursuant to President Reagan's decision of May 20, 1986. The President's May 1986 decision was the result of a petition for import restrictions on machine tool imports filed under section 232 of the Trade Expansion Act by the domestic machine tool manufacturing industry.

Balance of Payments Authority: Section 122 of the Trade Act of 1974

Section 122 of the Trade Act of 1974 [48] provides the President with authority either to increase or reduce restrictions on imports into the United States to deal with balance of payments problems.

Tighter restrictions in the form of an import surcharge (not to exceed 15 percent ad valorem), temporary quota, or a combination of the two may be imposed for up to 150 days (unless extended by act of Congress) whenever fundamental international payments problems make such restrictions necessary to deal with large and serious U.S. balance of payments deficits, to prevent an imminent and significant depreciation of the dollar, or to cooperate with other countries in correcting an international balance of payments disequilibrium.

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[48] Public Law sec. 122, approved January 3, 1975, 19 U.S.C. 2132.

Existing imports restrictions may be eased for a period of up to 150 days (unless extended by act of Congress) through a temporary reduction in the rate of duty on any article (not to exceed 5 percent ad valorem), a temporary increase in the value or quantity of imports subject to any type of import restriction, or a temporary suspension of any import restriction. Such restrictions may be eased whenever fundamental international payments problems require special measures to deal with large and serious balance of payments surpluses or to prevent significant appreciation of the dollar. Trade liberalizing measures must be broad and uniform as to articles covered. The President may not, however, liberalize imports of those products for which increased imports will cause or contribute to material injury to domestic firms or workers, impairment of national security, or otherwise be contrary to the national interest.

Certain conditions also are placed on the President's use of import restrictions for balance of payments purposes. Quotas may be imposed only if international agreements to which the United States is a party permit them as a balance of payments measure and only to the extent that the imbalance cannot be dealt with through an import surcharge. If the President determines that import restrictions are contrary to the national interest, he may refrain from imposing them but must inform and consult with Congress.

Section 122(d) requires that import restrictions be applied on a nondiscriminatory basis; it also requires that quotas aim to distribute foreign trade with the United States in a manner that reflects existing trade patterns. If the President finds, however, that the purposes of the provision would best be served by action against one or more countries with large and persistent balance of payment surpluses, he may exempt all other countries from such action. This section also expresses the sense of Congress that the President seeks modifications in international agreements to allow the use of surcharges instead of quotas for balance of payments adjustment purposes. If such international reforms are achieved, the President's authority to exempt all but one or two surplus countries from import restrictions must be applied in a manner consistent with the new international rules.

Section 122(e) provides that import restrictions be of broad and uniform application as to produce coverage, unless U.S. economic needs dictate otherwise. Exceptions under this section are limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials and similar factors, or if uniform restrictions will be unnecessary or ineffective (i.e., if products already are subject to import restrictions, are in transit, or are subject to binding contracts). The section prohibits the use of balance of payments authority or the exceptions authority to protect domestic industries from import competition. Any quantitative restriction imposed may not be more restrictive than the level of imports entered during the most recent representative period, and must take into account any increase in domestic consumption since the most recent representative period.

The President is authorized to modify, suspend, or terminate any proclamation issued under the section, either during the initial 150-day period or during any subsequent extension by act of Congress.

Background

Anticipating that oil-consuming nations would face large balance of payments deficits in an era of rapidly increasing oil prices, and believing that neither a reduction in the price of oil nor the necessary international monetary cooperation were certain to take place, Congress considered it necessary to authorize the President to impose surcharges or other import restrictions for balance of payments purposes, even though Congress assumed that under existing circumstances such authority was not likely to be used.[49] The Senate Committee on Finance indicated it was necessary to give the President explicit authority to impose such measures for balance of payments reasons, in light of judicial action striking down the use of the Trading with the Enemy Act for such purposes.[50] President Nixon had invoked that law in 1971 when he imposed a temporary 10 percent import surcharge to redress a balance of payments deficit.

The use of surcharges for balance of payments purposes had gained de facto acceptance among industrialized GATT nations during the two decades preceding the 1974 Trade Act, but explicit GATT rules had never been adopted. GATT Article XII authorizes restrictions on the quantity or value of goods imported by a country facing a balance-of-payments deficit. GATT rules do not, however, explicitly sanction the use of surcharges for balance-of-payments purposes, nor do they establish a means to deal with countries running persistent balance-of-payments surpluses. The Texts Concerning a Framework for the Conduct of World Trade,[51] negotiated during the Tokyo Round of Multilateral Trade Negotiations, elaborated on the rules which apply to countries' use of import restrictions for balance-of-payments purposes. The so-called Framework Agreement did not fundamentally alter GATT rules in this area, however.

When it passed the Trade Act of 1974, Congress urged the President to enter into negotiations to develop new rules and required that U.S. surcharges measures, if imposed, conform to any new international standards.[52] The Omnibus Trade and Competitiveness Act of 1988 called for the negotiation of rules to address large and persistent global current account imbalances, including the imposition of greater responsibility on surplus countries to undertake policy changes aimed at restoring current account equilibrium.[53]

Section 122 authority has never been invoked.

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[49] Senate Report 93-1298 at 87-88.

[50] The decision of the Customs Court was subsequently reversed on appeal. *U.S.* v. *Yoshida International Inc.*, 526 F.2d 560 (C.C.P.A. 1975).

[51] MTN/FR/W/20/Rev. 2, reprinted in House Doc. 96-153, pt. I, at 619.

[52] Senate Report 93-1298 at 88.

[53] P.L. 100-418, section 1101(b)(5); 19 U.S.C. 2901.

Product Standards

U.S. policy regarding the application of standards and certification procedures to imported products is based on the multilateral Agreement on Technical Barriers to Trade under the General Agreement on Tariffs and Trade (GATT), and its U.S. implementing legislation under title IV of the Trade Agreement Act of 1979.[54]

Differences in product standards, listing and approval proceducers, and certification systems often can impede trade and can be manipulated to discriminate against imports. Imports may be tested to determine whether they conform with domestic standards under conditions more onerous than those applicable to domestic products. Certification systems, which indicate whether products conform to standards, may limit access for imports or may discriminate by denying the right of a certification mark on imported products. Prior to the 1979 Agreement, however, there was virtually no multilateral cooperation or supervision to promote international harmonization and to discourage nationalistic discriminatory practices.

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Agreement on Technical Barriers to Trade,[55] commonly referred to as the Standards Code, was one of the agreements on nontariff measures concluded during the 1973-79 Tokyo Round of GATT Multilateral Trade Negotiations. The Code went into force on January 1, 1980. The Code does not attempt to create standards for individual products, or to set up specific testing and certification systems. Rather, it establishes, for the first time, international rules among governments regulating the procedures by which standards and certification systems are prepared, adopted and applied, and by which products are tested for conformity with standards. The Code was a major U.S. negotiating objective during the Tokyo Round, particularly given the formation of a European regional electrical certification system closed to outside suppliers.

The Standards Code seeks to eliminate national product standardization and testing practices and certification procedures as barriers to trade among the signatory countries and to encourage the use of open procedures in the adoption of standards. At the same time, it does not limit the ability of countries to reasonably protect the health, safety, security, environment, or consumer interests of their citizens. Generally, U.S. standards-setting processes have followed these basic norms, whereas other countries' standards-related activities have generally been closed to participation from foreign countries; these signatories are obliged to change their practices in order to comply with Code principles.

The Code's provisions are applicable to all products, both agricultural and industrial. They are not applicable to standards involving services, technical specifications include in government procurement contracts, or standards established by individual companies for their own use. The Code addresses governmental and non-governmental standards, both voluntary and mandatory, developed by central governments, state and local governments, and private sector organizations. Only central governments, however, are directly bound by Code obligations, whereas regional, state, local, and private organizations are subject to a second level of obligation whereby signatories "shall take such reasonable measures as may be available to them" to ensure compliance.

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[54] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2531-2573.

[55] MTN/NTM/W/192 Rev. 5, reprinted in House Doc. No. 96-153, pt. I, at 211.

The Code is prospective, applying to new and revised standards-related activities. If a signatory country believes, however, that an existing regulation developed and put into effect before the Code came into force conflicts with the basic tenets of the Code, then that signatory may use the Code's dispute settlement mechanism to help resolve the problem.

The Standards Code contains the following key provisions obligating signatories to follow several general principles pertaining to standards-related activities:

(1) The most important and fundamental principle obligates signatory governments not to develop, intentionally or unintentionally, product standards, technical regulations, or certification systems which create unnecessary obstacles to foreign trade. The Code recognizes nations' sovereign right to formulate standards and certification systems to protect life, health and environment, but such regulations should be as least disruptive as possible to international trade.

(2) The second fundamental principle is that national or regional certification systems are to grant access to foreign or non-member signatory suppliers under conditions no less favorable than those granted to domestic or member country suppliers, a major change in most signatory policies. Signatories can no longer refuse to give their national certification marks to imported products, provided that the imported products fully meet the technical requirements of the certification system. Also regional certification bodies must be open to suppliers from all Code signatories.

(3) Signatories must provide foreign imported products the same treatment as domestic goods with respect to standards, technical regulations, and testing and certification procedures, i.e., an extension of the national treatment provision of GATT which prohibits discrimination against imported products.

(4) When developing new or revising existing product standards or technical regulations, governments are to use existing or proposed international standards as the basis where it is appropriate. Other signatories may request an explanation if a government fails to follow this principle.

(5) Whenever appropriate, signatories are encouraged to specify technical regulations and standards in terms of performance rather than design or descriptive characteristics.

If a foreign product must be tested to determine whether it meets domestic standards before it can be imported, the Code provides a number of criteria that signatories are to follow to ensure non-discriminatory treatment. For example, foreign goods should not have to undergo costlier or more complex testing than domestic products in comparable situations. In addition, signatories are obligated to use the same methods and administrative procedures on imported as well as domestic goods. The Code does not obligate signatories to recognize test results or certification marks from another country. It does, however, encourage signatories to accept, whenever possible, test results, certifications or marks of conformity from foreign bodies, or self-certification from foreign producers even when the test methods differ from their own, provided that the importing country is satisfied that the exporting country's products meet the required standards.

Another important element of the Standards Code is the obligation of signatories to open up the process of developing or applying standards and certification procedures to each other. Governments must make available proposed mandatory or voluntary standards and certification procedures for comment during the drafting stage by other signatories before they become final regulations. Each signatory government must establish an inquiry point to respond to all reasonable questions from other signatories concerning their central, local, and state government standards and certification procedures.

Finally, the Code establishes a Committee of Signatories which meets periodically to oversee implementation and administration of the agreement, as well as to discuss any new issues or problems which arise. The Committee may set up panels of experts or working parties as required to conduct Committee business or handle disputes.

TITLE IV OF THE TRADE AGREEMENTS ACT OF 1979

Congress approved the Agreement on Technical Barriers to Trade under section 2 of the Trade Agreements Act of 1979. Title IV of that Act implements the obligations of the Standards Code in U.S. law.[56] Since U.S. practices were already in conformity with the Code, title IV did not amend, repeal, or replace any existing law. It does ensure that adequate structures exist within the Federal Government to inform the U.S. private sector about the standards-related activities of other nations, facilitate the ability of the United States to comment on foreign standards-making and certifications, and process domestic complaints on foreign practices.

Section 402 of the 1979 Act requires all Federal agencies to abide by the above-described principles and provisions of the Code. In addition, section 403 states the "sense of Congress" that no State agency and no private person should engage in any standards-related activity, i.e., development or implementation of product standards or certification system, that creates unnecessary obstacles to foreign trade, and requires the President to "take such reasonable measures as may be available" to promote their observance of Code obligations.

The U.S. Trade Representative (USTR) is designated to coordinate U.S. trade policies related to standards, and discussions and negotiations with foreign countries on standards issues, and to oversee implementation of the Standards Code. The Departments of Agriculture and Commerce are required to work with the USTR on agricultural and non-agricultural issues respectively and to establish technical offices to fulfill a number of functions, particularly supplying notices to interested parties of proposed foreign government standards and receiving and transmitting private sector comments. The Department of Commerce maintains the National Center for Standards and Certification within the National Bureau of Standards as the national inquiry point required under the Code.

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[56] 19 U.S.C. 2531-2573.

Finally, title IV contains provisions concerning administrative and judicial proceedings regarding standards-related activities. No private rights of action are created by title IV; private parties can petition the U.S. Government to invoke provisions of the Code against practices of other signatories.

Government Procurement

U.S. policy on government purchases of foreign goods and services is based on the Buy American Act of 1933,[57] the multilateral Agreement on Government Procurement under the General Agreement on Tariffs and Trade (GATT), and its implementing legislation under title III of the Trade Agreements Act of 1979.[58] The "Buy American Act of 1988" (Title VII of the Omnibus Trade and Competitiveness Act of 1988)[59] establishes standards and procedures to prohibit procurement from foreign countries whose governments discriminate against U.S. products or services in awarding contracts. In addition, separate provisions in appropriation Acts and other legislation apply more restrictive Buy American-type provisions on particular types of purchases.

Governments are among the world's largest purchasers of nonstrategic goods. Most of this vast market has traditionally been closed to foreign producers by means of formal and informal administrative systems of national discrimination in favor of domestic producers. Although U.S. preferences for domestic suppliers are clearly set out by law and regulation, other countries usually have achieved their discrimination by highly invisible administrative practices and procedures. Government procurement is also excluded from GATT national treatment and most-favored-nation obligations.

Buy American Act

The Buy American Act of 1933, as implemented by Executive Orders 10582 and 11051, requires the U.S. Government to purchase domestic goods and services unless the head of the agency or department involved determines the prices of the domestic supplies are "unreasonable" or their purchase would be inconsistent with the U.S. public interest. Executive Order 10582, issued in 1954, states that if the domestic price of a good or service is 6 percent or more above the foreign price, then it is to be considered unreasonable and the foreign product may be purchased. The order also permits agencies to use a differential above 6 percent if it would serve the national interest. The Department of Defense has been using a 50 percent differential since 1962 for its procurement, except this differential is waived on military purchases under reciprocal Memoranda of Understanding (MOUs) with NATO countries. The order also indicated that a differential could be applied in cases where a domestic bid generated employment in a labor surplus area as designated by the Secretary of Labor. No specific percentage was stated, but generally a 12 percent differential has been allowed for bids which benefit economically distressed areas. These price differentials may be waived under section 301(a) of the Trade Agreements Act of 1979 for articles covered by the GATT Agreement on Government Procurement from signatory countries.

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[57] Act of March 3, 1933, ch. 212, title III, 47 Stat. 1520, 41 U.S.C. 10a–10d.

[58] Public Law 96–39, title III, approved July 26, 1979, 19 U.S.C. 2511–2518.

[59] Public Law 100–418, title VII, approved August 23, 1988, 41 U.S.C. 10a note.

United States-made products are defined by law as those manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. By regulations, "substantially all" has been defined to mean that more than 50 percent of the component costs of a product has been incurred in the United States.

AGREEMENT ON GOVERNMENT PROCUREMENT

The Agreement on Government Procurement, also known as the Government Procurement Code,[60] was concluded as one of the agreements on nontariff measures during the 1975–79 Toyko Round of GATT Multilateral Trade Negotiations (MTN). The Code went into effect on January 1, 1981. A major aim of the United States in the MTN was to develop an international obligation among signatory countries to employ transparent, nondiscriminatory practices at all stages of the procurement process and to open up procurement systems in the high export potential government procurement markets of Europe, Japan, and Canada enabling U.S. firms to compete for foreign government contracts on an equal footing.

Because not all objectives were achieved in the original Code and revisions might be necessary in light of actual experience, the signatories agreed to renegotiations beginning at the end of 1984 to broaden the coverage and improve the operation of the Code. The GATT Committee on Government Procurement completed the first phase of these renegotiations in November, 1986 with agreement (1) on a Protocol of Amendments to improve the functioning of the Code, effective January 1, 1988; (2) to continue negotiations on increasing the number of entities (government agencies) and procurements covered by the Code, particularly in the sectors of telecommunications, heavy electrical and transportation equipment; and (3) to continue to work towards the coverage of service contracts under the Code. The second phase of Code renegotiations began in February, 1987.

The Code is designed to discourage discrimination against foreign suppliers at all stages of the procurement process, from the determination of the characteristic of the product to be purchased to tendering procedures, to contract performance. The Code prescribes specific rules on the drafting of the specifications for goods to be purchased, advertising of prospective purchases, time allocated for the submission of the bids, qualification of suppliers, opening and evaluation of bids, awards of contracts, and on hearing and reviewing protests.

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[60] MTN/NTM/W/211/Rev. 2, reprinted in House Doc. No. 96–153, pt. I, at 69.

Signatories must publish their procurement laws and regulations and make them consistent with the Code rules. Purchasing entities have discretion in their choice of purchasing procedures, provided they provide equitable treatment of all suppliers and allow the maximum degree of competition possible.

Each government agency covered by the Code is required to publish a notice of each proposed purchase in an appropriate publication available to the public, and to provide all suppliers with enough information to permit them to submit responsive tenders. Losing bidders must be informed of all awards and be provided upon request with pertinent information concerning the reasons they were not selected and the name and relative advantages of the winning bidder. Signatories must also provide data on their procurements on an annual basis.

The adoption or use of technical specifications which act to create unnecessary obstacles to international trade is prohibited. The Code mandates the use, where appropriate, of technical specifications based on performance rather than design, and of specifications based on recognized national or international standards.

While the Code does not prohibit the granting of an offset or the requirement that technology be licensed as a condition of award, signatories recognize that offsets and requirements for licensing of technology should be limited and used in a nondiscriminatory way.

The Code is largely self-policing. Rules and procedures are structured to help provide solutions to problems between potential suppliers and procuring agencies. As a next step, the Code provides for bilateral consultations between the procuring government and the government of the aggrieved supplier. As a last resort, the Code dispute settlement mechanism under the Committee of Signatories provides for conciliation or establishment of a fact-finding panel.

Coverage of the agreement

The original U.S. negotiating objective had been to include all entities under the direct or substantial control of governments. Most signatory governments were not prepared to agree to this breadth of coverage. Consequently, the Code applies solely to those agencies listed by each signatory in an Annex on contracts valued above a specific minimum contract value expressed in terms of Special Drawing Rights. The original Code established a threshold value of 150,000 SDR; the 1988 Protocol of Amendments to the Code lowered the minimum contract value to SDR 130,000. In the context of the MTN Agreement on Trade in Civil Aircraft, signatories agreed to eliminate discriminatory practices by all government entities in purchasing aircraft, without a value threshold.

The benefits of the Code apply to purchases of goods originating in the territory of signatory countries. As a result of the 1988 amendments, leasing contracts are also subject to the Code. It does not apply to government services except those incidental to the purchase of goods, construction contracts, purchases by Ministries of Agriculture for farm support programs or human feeding programs such as the U.S. school lunch program. Procurements by State and local governments, including those with Federal funds such as under the Surface Transportation Act, are not subject to the Code.

For the United States, the Code does not apply to the Department of Transportation, the Department of Energy, the Tennessee Valley Authority, the Corps of Engineers of the Department of Defense, the Bureau of Reclamation of the Department of the Interior, and the automated Data and Telecommunications Service of the General Services Administration. In addition, government chartered corporations which are not bound by the Buy American Act, such as the U.S. Postal Service, COMSAT, AMTRAK, and CONRAIL, are not covered.

United States Code coverage also does not apply to set-aside programs reserving purchases for small and minority businesses, prison and blind-made goods, or to the requirements contained in Department of Defense and GAS Appropriations Acts that certain products (i.e., textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses, hand tools, ships, and major ship components) be purchased only from domestic sources.

TITLE III OF THE TRADE AGREEMENTS ACT OF 1979

Congress approved the Agreement on Government Procurement under section 2 of the Trade Agreements Act of 1979. Title III of that Act implements the obligations of the Code in U.S. law with respect to purchases by covered Government entities.[61] Since Code provisions reflect many aspects of existing U.S. procurement practic, few changes in domestic law were required.

Executive Order 12260, issued on December 31, 1980, requires all U.S. Government agencies covered by the Code to observe its provisions. Section 301 of the 1979 Act authorizes the President to waive the application of discriminatory government procurement law, such as the Buy American Act, and labor surplus set-asides that are not for a small business. The waiver authority applies only to purchases covered by the Code and only to foreign countries designated by the President that meet one of four statutory conditions basically requiring the country to provide appropriate reciprocal, competitive government procurement opportunities to U.S. products and suppliers, unless the country is a least developed country.

Buy American Act preferences still apply to contracts below the 130,000 SDR threshold, purchases by noncovered entities, and procurement from countries not eligible for a waiver regardless of contract size. Special Buy American-type restrictions under other laws (e.g., small business set asides, required domestic sourcing of particular goods) are also not affected.

Section 302 of the 1979 Act is designed to encourage other countries to participate in the Code and provide appropriate reciprocal competitive opportunities. For this purpose, the President is required, after the date on which any waiver first takes effect, to prohibit the procurement of products otherwise covered by the Code from non-designated countries. The President may, however, (1) delay the prohibition for up to two years except with respect to procurements from major industrial countries; (2) authorize agency heads to waive prohibitions on a case-by-case basis when in the national interest; and (3) authorize the Secretary of Defense to waive the prohibition for products of any country which enters into a reciprocal procurement agreement with the Department of Defense. All such waivers are subject to interagency review and general policy guidance.

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[61] 19 U.S.C. 2511-2518

Section 303 authorized the President to waive as of January 1, 1980 the application of the Buy American Act for purchases by any government entity of civil aircraft and related articles irrespective of value from countries party to the MTN Agreement on Trade in Civil Aircraft.

Section 304 sets forth negotiating objectives in conjunction with the renegotiation of the Code within 3 years to improve its operation and broaden the coverage. The President is directed to seek more open and equitable foreign market access and the harmonization, reduction, or elimination of devices distorting government procurement trade. The President must also seek equivalent competitive opportunities in developed countries for U.S. exports in appropriate product sectors as the United States affords their products, such as in the heavy electrical, telecommunications, and transport equipment sectors. The President must report to the committees of jurisdiction during the renegotiations if he determines they are not progressing satisfactorily and are not likely to result within 12 months in expanded agreement coverage of principal developed country purchasers in appropriate product sectors. The President is also directed to indicate appropriate actions to seek sector reciprocity with such countries in government procurement, and may recommend legislation to prohibit procurement by entities not covered by the Code from such countries.

Title III of the 1979 Act also contains a number of reporting requirements to the Congress on various aspects of the Code and its economic impact and implementation.

TITLE VII OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Buy American Act of 1988")[62] amends both the Buy American Act of 1933 and Title III of the Trade Agreements Act of 1979 to address discrimination by foreign governments in the procurement of U.S. products or services. Title VII prohibits U.S. government procurement of products and services from (1) signatories "not in good standing" to the Agreement, (2) signatories that discriminate against U.S. firms in their government procurement of products or services not covered by the Agreement, and (3) nonsignatories to the Agreement whose governments discriminate against U.S. products or services in their procurement.

In the case of countries that discriminate on procurement not covered by the Agreement, prohibitions are to be imposed when a foreign government maintains a significant and persistent pattern or practice of discrimination against procurement of U.S. products or services that results in identifiable harm to U.S. business. In cases of signatories to the Agreement, Federal agencies would be prohibited from procuring only non-Agreement covered products from these countries unless that country has also been designated as a country "not in good standing."

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[62] 41 U.S.C. 10a note.

Least developed countries are exempt from the procurement prohibition, as are products and services procured and used by the Federal government outside the United States and its territories. A prohibition may also be waived, on a contract-by-contract or class or contracts basis, when in the public interest or to avoid the creation of a monopoly situation. The President or head of a Federal agency may also authorize the award of a contract or class of contracts, notwithstanding a prohibition, if insufficient competition exists to assure the procurement of products or services of requisite quality at competitive prices. Normally the Congress must be notified at least 30 days before the prohibition is waived on a contract or class of contract.

The President must submit to appropriate Congressional committees by April 30, 1990 and annually thereafter a report on the extent to which countries discriminate against U.S. products or services in making government procurements. The report must identify (1) signatories to the Agreement that are not in compliance with its requirements; (2) signatories to the Agreement whose products and services are acquired in significant amounts by the U.S. Government, who are in compliance with the Agreement, but maintain a significant and persistent pattern or practice of discrimination in the government procurement of products and services not covered by the Agreement which results in identifiable harm to U.S. businesses; and (3) nonsignatories to the Agreement whose products or services are acquired in significant amounts by the U.S. Government and who maintain in their government procurement a significant and persistent pattern or practice of discrimination which results in identifiable harm to U.S. businesses. The law requires the President to take into account a number of specific factors in identifying countries and to describe the practices and their impact in the annual report.

By the date the annual report is submitted, the USTR must request consultations with any identified country, unless that country was also identified in the preceding annual report. If the country is a signatory identified as not in compliance with the Agreement and does not comply within 60 days after the annual report is issued, the USTR must request formal dispute settlement proceedings under the Agreement, unless they are already underway pursuant to a previous identification. If dispute settlement is not concluded within one year or has concluded and the country has not taken action required as a result of the procedures to the satisfaction of the President, the country is considered "not in good standing" and the President is required to revoke the waiver of Buy American restrictions granted under the Trade Agreements Act of 1979. The President will not limit procurement from the foreign country if, before the end of the year following initiation of dispute settlement, the country has complied with the Agreement, has taken action recommended as a result of the procedures to the satisfaction of the President, or the procedures result in a determination requiring no action by the country. The President may also terminate the sanctions and reinstate a waiver at any time under such circumstances.

Within 60 days after the annual report is issued, the President must impose the procurement prohibition on any country identified as discriminating on procurements not covered by the Agreement and which has not eliminated its discriminatory procurement practices. The President may terminate the sanctions at such time as he determines the country has eliminated the discrimination.

With respect to either category of countries, if the President determines that imposing or continuing the sanctions would harm the U.S. public interest, the President may modify or restrict the application of the sanctions to the extent necessary to impose appropriate limitations that are equivalent in their effect to the discrimination against U.S. products or services in government procurement by that country. The President also cannot impose sanctions if it would (1) limit U.S. government procurement to, or create a preference for, products or services of a single supplier; or (2) create a situation where there could be or are an insufficient number of actual or potential bidders to assure U.S. government procurement of goods or services of requisite quality at competitive prices.

By April 30, 1994, the President must submit to the Congress a general report on actions taken under Title VII, including an evaluation of the adequacy and effectiveness of such actions as a means toward eliminating foreign discriminatory government procurement practices against U.S. businesses and, if appropriate, legislative recommendations for enhancing the usefulness of Title VII or any other measures to eliminate or respond to foreign discriminatory foreign procurement practices. Title VII shall cease to be effective on April 30, 1996 unless extended by the Congress.

Chapter 4: LAWS REGULATING EXPORT ACTIVITIES

Export Administration Act of 1979, As Amended [1]

Background

Through statute, Congress has authorized the President to control the export of various commodities. The three most significant programs for controlling different types of exports deal with nuclear materials and technology, defense articles and services, and nonmilitary dual-use goods and technology. Under each program, licenses of various types are required before an export can be undertaken. The Nuclear Regulatory Commission is responsible for the licensing of nuclear materials and technology under the Atomic Energy Act. The Department of State is responsible for the licensing of exports of defense articles and services and maintains the Munitions Control List under the Arms Export Control Act.

Export licensing requirements for most commercial goods and technical data are authorized by the Export Administration Act under the jurisdiction of the Office of Export Administration in the Department of Commerce. The three basic purposes of export controls are to protect the national security, to further U.S. foreign policy interests, and to protect commodities in short supply. The Secretary of Defense is authorized to review certain applications for national security purposes while the Secretary of State reviews specified license applications for foreign policy purposes.

The export of goods or technical data subject to the Commodity Control List (CCL) must be authorized by licenses (either individual validated licenses or bulk licenses authorizing multiple shipments) which are granted on the basis of such factors as intended end-use and the probability and likely effect of diversion to military use. Exports and reexports from a foreign country of U.S.-origin commodities and technical data or of foreign products containing U.S.-origin components or technology are also regulated. The CCL contains over 200 categories of goods and technologies applied to seven country groups, with the most stringent controls (near total embargoes) on exports to Cuba, Kampuchea, North Korea, Vietnam, and Nicaragua.

The foreign policy export control authority was used by President Carter to embargo the export of grain to the Soviet Union after the 1979 Soviet invasion of Afghanistan. President Reagan used it again in 1981 until late 1983, following the imposition of martial law in Poland, to embargo sales by U.S. firms and their foreign subsidiaries of oil and gas transmission and refining commodities and technology for use by the Soviet Union on its natural gas pipeline to Western Europe. Foreign policy controls are maintained on numerous other commodities, including technical data and equipment for the manufacture of trucks at the Soviet Kama River truck complex. Crime control and detection instruments and equipment are subject to control for foreign policy reasons to countries which may engage in persistent gross violations of human rights. Certain other goods and technology are controlled to five countries (Libya, Iran, Syria, South Yemen, and Cuba) due to their repeated support of international terrorism.

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[1] 50 U.S.C. App. 2401, P.L. 96-72, as amended by P.L. 96-533, P.L. 97-145, P.L. 98-108, P.L. 98-207, P.L. 98-222, P.L. 99-64, P.L. 99-399, P.L. 99-441, and P.L. 99-633.

The short supply control authority was used to help control raw materials prices during the Korean conflict. In 1973 President Nixon prohibited soybean exports as a response to rapidly increasing prices. The export of crude oil carried on the Trans-Alaska Pipeline is prohibited. Exports of crude oil and refined and unprocessed western red cedar harvested from Federal or State lands are subject to validated licensing requirements.

The U.S. Government has employed export controls continuously since 1940. The first controls were imposed to avoid or mitigate the scarcity of various critical commodities during World War II and to assure their equitable distribution within the U.S. economy and to U.S. allies. Export controls were expected to terminate after shortages created by World War II were substantially eliminated. However, the "Cold War" led to enactment of the Export Control Act of 1949, designed to control all U.S. exports to Communist countries.

The Export Control Act of 1949 provided for the control of items in short supply, for controls to further U.S. foreign policy goals, and for the examination of exports to Communist countries which might have military application. The 1949 Act, amended and extended as appropriate, remained in effect for 20 years. The 1949 Act was then replaced by the Export Administration Act of 1969, which was in turn replaced by the Export Administration Act of 1979.

The 1969 Act maintained the basic export control system set up by the Export Control Act, but called for a removal of controls on goods and technologies that were freely available from foreign sources and that were only marginally of military value. The 1969 Act was amended in 1972, 1974, and 1977.

A significant expansion of controls was brought about in 1977 when Congress amended the 1969 Act to authorize the control of goods and technology exported by any person subject to the jurisdiction of the United States, thus permitting the Department of Commerce to exercise control over foreign-origin goods and technical data reexported by U.S.-owned or U.S.-controlled companies abroad. Antiboycott policies (originally established by Congress in 1965) were also substantially strengthened in 1977.

EXPORT ADMINISTRATION ACT OF 1979

The Export Administration Act of 1979, as reauthorized and amended in 1985, currently provides the broad and primary authority for controlling the export from the United States to potential adversary nations of civilian goods and technology which could contribute significantly to the military capability of controlled countries (consisting of Communist countries, as defined in section

620(f) of the Foreign Assistance Act of 1961) if diverted to military application (national security controls under section 5). Like the previous law, the 1979 Act also authorized the President to impose export controls for foreign policy reasons or to fulfill international obligations (foreign policy controls under section 6) and to protect the domestic economy from an excessive drain of scarce materials and to reduce the inflationary impact of foreign demand (short supply controls under section 7). The Act also continues the 1977 antiboycott program (section 8) which prohibits U.S. persons from taking action with the intent to comply with, further, or support any foreign country boycott against any country friendly to the United States (primarily Arab states against Israel).

In its 1979 review of the Export Administration Act of 1969, the Congress made substantial changes in the statute. Separate and distinct procedures and criteria were established for imposing national security and foreign policy controls. Precise time deadlines were set for the processing of export license applications. Development of a "militarily critical technologies list" (MCTL) was mandated, both as a means of reviewing the adequacy and focus of the existing Commodity Control List of categories of goods and technologies subject to Commerce export controls, and as a possible means of arriving at a more limited control list containing only the most militarily significant technologies. Foreign availability of goods controlled by the United States was, for the first time, made a factor in decisions to license such items for export.

The Act also formally authorized U.S. participation in the informal multilateral export control body known as COCOM (Coordinating Committee on Multilateral Export Controls) in which the NATO countries (with the exception of Iceland) and Japan also participate. Since 1950, COCOM has attempted to coordinate the export control policies of the Western allies with respect to Communist countries. Representatives of the participating governments meet periodically to set guidelines for controls on exports to Communist countries. The 1979 Act directed the President to negotiate with other COCOM governments in an effort to reach agreement on reducing the scope of export controls, holding periodic high-level meetings on COCOM policy, publishing the list of items controlled by COCOM, and introducing more effective procedures for enforcing COCOM export controls.

The 1979 Act authorized the administration of export controls until September 30, 1983. The Act was extended temporarily three times during the 98th Congress, through October 15, 1983, subsequently through February 28, 1984, and finally until March 30, 1984,[2] while the Congress considered proposals for major changes in the law. During the lapses in authority in 1983 and after the 1979 Act terminated on March 30, 1984, and House-Senate differences could not be resolved prior to congressional adjournment on October 12, 1985, the President administered export controls under the authority of the International Emergency Economic Powers Act and Executive Order 12470 of March 30, 1984, as an interim method of control until new authority could be passed by Congress. The Export Administration Amendments Act of 1985 (P.L. 99-64), which reauthorized the 1979 Act for 4 years until September 30, 1989, with amendments, was enacted on July 12, 1985.

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[2] Public Law 98-108, approved October 1, 1983.
Public Law 98-207, approved December 5, 1983.
Public Law 98-222, approved February 29, 1984.

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985

The 1985 Act left intact the basic structure of U.S. national security, foreign policy, and short-supply export controls. The main goals of the 1985 Act were to improve U.S. export competitiveness and to promote national security interests through stricter controls and better enforcement.

Increased U.S. competitiveness was to be achieved by easing the total licensing burden on U.S. businesses. Export licensing requirements were eliminated in the case of certain relatively low-technology items, and the Secretary of Commerce was directed to review and revise the commodity control list at least once a year. The approval process for license applications was to be streamlined as well. The 1985 amendments also addressed the issue of foreign availability by specifying a process to provide for the review and decontrol of goods found to be widely available and unable to be brought under control.

The promotion of national security interests was to be achieved by providing stricter controls for the export of critical items and strengthening the enforcement of U.S. export controls. The 1985 Act required the United States to undertake negotiations with COCOM countries to achieve greater coordination and compliance with multilateral controls, fewer exceptions to the control list, and strengthened and uniform enforcement. It created new criminal offenses against illegal diversions and added to the broad range of sanctions against violators of U.S. export controls.

The Act also restrained the President's authority to impose new foreign policy export controls, particularly to embargo agricultural exports. Additional requirements for consultations with industry and Congress prior to the imposition of foreign policy controls and greater attention to specified criteria, including the foreign availability of competing products, are to be considered prior to decisons to extend, expand, or impose export controls.

The 1985 Act also imposed limitations on, but did not entirely eliminate, the discretion of the President to impose foreign policy controls on exports subject to existing contracts. The Act prohibits controls on exports of goods or technology under existing contracts except where the President determines and certifies to the Congress that a breach of the peace poses a serious and direct threat to U.S. strategic interests and the prohibition or curtailment of such contracts would be instrumental in remedying the situation posing the direct threat.

The Act sets forth stiffer penalties for violators and grants new powers for enforcement to the Department of Commerce and the U.S. Customs Service and clarifies the respective roles of these agencies. Commerce retains the primary responsibility for licensing and domestic enforcement whereas Customs was given primary responsibility for enforcement at all U.S. ports of exit and entry as well as all enforcement responsibility overseas. The legislation itself was silent on the controversial issue of the role and authority of the Department of Defense in reviewing export license applications for U.S. shipments to Western nations.

The Act created a new Under Secretary of Export Administration and two Assistant Secretaries in the Department of Commerce and a new National Security Council Office in the Department of Defense. The effective date for the Under Secretary of Export Administration and two Assistant Secretaries was delayed until October 1, 1987, by the Defense Production Act (P.L. 99-441). Congress also directed that an Office of Foreign Availability be established in the Department of Commerce.

Omnibus Trade and Competitiveness Act of 1988

Congressional dissatisfaction with the implementation of the Export Administration Amendments Act of 1985 led to the introduction of new legislation during both the 99th and 100th Congresses. The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) contains major revisions of the Export Administration Act of 1979. Like the 1985 amendments, the 1988 Act emphasized the reduction of export disincentives and the strengthening of export enforcement. A clarification of the dispute resolution process was also a part of the Act. The authorization date for the Export Administration Act was extended by 1 year to September 30, 1990.

REDUCTION OF DISINCENTIVES

The reduction of export disincentives will be accomplished through a streamlining of licensing requirements, control list reduction, and improved procedures for making foreign availability determinations. The 1988 Act also provides for the use of distribution licenses for multiple exports to the People's Republic of China.

Streamlining of License Requirements. The 1988 Act eliminates license requirements for low technology exports to free world countries (specifically, those goods that can be exported to controlled countries without multilateral approval—so called "AEN level" goods and technology). For exports to COCOM countries or countries which participate in cooperative agreements, known as 5(k) countries, export licensing requirements are eliminated for goods that can currently be exported to the People's Republic of China without multilateral approval (so-called "PRC green line level" goods and technologies). The threshold level for requiring licenses for exports to COCOM and 5(k) countries was raised from the AEN level to the PRC green line level.

The Act also requires the Secretary of Commerce, within 3 months of enactment, to determine which COCOM and 5(k) countries have effective export control systems, and to eliminate all licensing requirements to such countries. The objective of this provision is to achieve a license-free zone among COCOM and 5(k) countries. License requirements for reexports of goods and technology among COCOM and 5(k) countries were also eliminated, as were requirements for parts and components incorporated into foreign made goods when U.S. content amounts to 25 percent or less of the total value. The Act provides that the Secretary of Commerce may require notification of such reexports, but the report of the conference committee states that such notification, if imposed, should not be required prior to such reexport.

Control List Reduction. The 1988 Act provided for the elimination of export controls for low technology items ("AEN level" goods and technology) within 6 months of enactment, unless COCOM agrees to maintain notification requirements for specific goods or technologies. Export controls were also removed from medical instruments and equipment, unless the functional characteristics of the good as a whole would make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

The 1988 Act also eliminates from the control list a broad range of goods subject to unilateral control by the United States. Unilaterally controlled goods were to be removed from the control list within 6 months of enactment or 6 months after imposition of such unilateral controls, unless the President is engaged in negotiations to achieve multilateral control, or unless the item is unique to the United States and no foreign availability exists. In cases where negotiations are underway to establish multilateral export controls, the items must be decontrolled if no multilateral agreement has been reached after a maximum of 2 six-month periods have passed.

Dispute Resolution. In response to complaints from exporters about delays caused by disputes between the Departments of Commerce and Defense, the 1988 Act provides a timetable for the resolution of interagency disputes over license applications and over the inclusion of items on the control list. If the Secretary of Defense fails to make a recommendation or provide notification within the specified 20-day period, or if the President fails to notify the Secretary of Commerce that he approves or disapproves the export, the Secretary shall then act upon the license application. The conference report also clarifies that the role of the Secretary of Defense is limited to national security, not foreign policy, considerations.

Foreign Availability. The 1988 Act establishes a maximum of 9 months for making foreign availability determinations, provides new guidelines for making such determinations, and provides a clear definition of the term foreign availability. The Act also provides for the decontrol of goods that are found to be available in those Western countries that do not belong to COCOM or maintain 5(k) agreements with the United States (West-West foreign availability).

STRENGTHENED ENFORCEMENT

The 1988 Act provides for stronger enforcement of U.S. and multilateral export controls.

Violations of U.S. Laws. In the case of persons convicted of violations of the Export Administration Act of 1979 or the International Emergency Economic Powers Act (P.L. 95–223), the Department of Commerce is authorized to bar such persons from applying for or using export licenses. Such authority is also extended to parties related through affiliation, ownership, control, or position of responsibility to any person convicted of violations.

Violations of Foreign Laws. In response to the Toshiba-Kongsberg diversion of militarily sensitive equipment to the Soviet Union, the Congress passed the Multilateral Export Control Enhancement Amendments Act (Sections 2441–2447 of the Omnibus Trade and Competitiveness Act of 1988). In addition to imposing import penalties against a Japanese and a Norwegian firm, the Act provides for prospective mandatory sanctions against any foreign person that violates any regulation issued by a country to control exports for national security purposes pursuant to the COCOM agreement. Such violation must have resulted in substantial enhancement of Soviet and East bloc capabilities and must be determined by the President to represent a serious adverse impact on the strategic balance of forces.

The sanctions which the President may impose include debarment from U.S. Government contracting and procurement and a prohibition on importation into the United States of all products produced by a sanctioned person. Sanctions are to be applied for a period of 2 to 5 years. The President is also required to initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation in an amount proportionate to the increased costs to the U.S. and allied governments for research and development of new defensive systems. The Attorney General may also seek civil damages against the violator, any person owned or controlled by the violator, and any person who owns and controls the person who committed the violation.

The Act also provides discretionary authority to impose sanctions for up to 5 years on foreign persons that have violated COCOM regulations. Discretionary sanctions may be imposed in those cases where no serious adverse impact on the strategic balance of forces occurred.

Foreign Corrupt Practices Act

During the mid-1970's, investigations and administrative and legal actions against numerous domestic corporations revealed the practice of making questionable or illegal payments by U.S. corporations to foreign government officials. The legal and regulatory mechanisms for dealing with such payments had involved actions by the Securities and Exchange Commission (SEC) against public corporations for concealing from required public disclosure substantial payments made by the firm, and the potential for an antitrust action for restraint of trade or fraud prosecution by the Department of Justice.

Government officials and administrators contended that more direct prohibitions on foreign bribery and more detailed requirements concerning corporate recordkeeping and accountability were needed to deal effectively with the problem.

The Foreign Corrupt Practices Act of 1977,[3] as amended by the Omnibus Trade and Competitiveness Act of 1988, [4] was enacted to prevent corporate bribery of foreign officials, and is comprised of three basic provisions:

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[3] Public Law 95–213, title I, approved December 19, 1977, 15 U.S.C. 78a–78ff.

[4] Public Law 100–418, title V, approved August 23, 1988, 15 U.S.C. 78a.

1. *Books and Records.* Section 102 of the Act amends section 13(b) of the Securities Exchange Act of 1934 [5] to require firms with securities registered with the SEC to keep detailed books, records, and accounts accurately reflecting corporate payments and transactions. The provision would thus prohibit the "disguising" of questionable payments made to persons overseas and would prohibit so-called secret slush funds, that is, "inaccurate books, off-the-book accounts and related practices."

Penalties for violations of the books and records requirements are those civil penalties applicable generally to violations of other provisions of the Securities Exchange Act. No criminal penalties may be imposed unless there is a "knowing" circumvention or failure to implement both the book and records requirement and the internal accounting requirement of the Act.

2. *Internal Accounting Controls.* Section 102 further amends section 13(b) gf the Securities Exchange Act to require firms with securities registered with the SEC to institute and maintain an adequate internal accounting control system to assure management's control, authority, and responsibility over the firm's assets and "that the assets of the issuer are used for proper corporate purpose." The maintenance of an internal accounting control system is required to attempt to assure that transactions of the firm are executed and access to the firm's assets is permitted only "in accordance with management's general or specific authorization" and to assure that transactions are recorded and identified in conformance with generally accepted accounting standards. Penalties for violations of this provision are the same as those for the books and records provision.

3. *Criminalization of Foreign Bribery.* Sections 103 and 104 of the Act specifically prohibit domestic firms, whether registered with the SEC or not, from corruptly bribing a foreign official, a foreign political party, party official, or candidate for the purpose of obtaining or maintaining business. Criminal penalties are provided for any firm regulated by the SEC or for any other domestic concern which uses the mails or interstate commerce "corruptly" in furtherance of an offer of payment of money or anything of value to a "foreign official" or to a political party, party official, or candidate for foreign political office for the purpose of influencing such person in his or her decisionmaking or in the use of his or her influence to affect governmental decisions to assist the firm in obtaining or retaining business. The Act specifically excludes from its coverage payments made to facilitate or expedite the performance of a routine governmental action by a foreign official, political party, or party official (i.e., so-called grease payments).

In addition to prohibiting such bribes directly by a firm or by any of its employees, officers, agents, or directors acting on its behalf, the payment of money to any person by a firm when the firm knew that the payment or part of that payment was to be used to bribe a foreign official is also subject to penalty.

Penalties for violations of the bribery provisions of the Act include fines for the firm or corporation of up to $2,000,000 and fines of up to $100,000, imprisonment of up to 5 years, or both for individuals who are convicted of violating these provisions. The Attorney General is further authorized to seek injunctive relief against domestic firms or individuals when it appears that they are about to engage in a violation of the bribery provisions.

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[5] Public Law 73-291, ch. 404, approved June 6, 1934, 15 U.S.C. 77b–78hh.

The recordkeeping and accounting controls provisions of the Act, requiring fair and accurate accounting of corporate transactions and expenditures with respect to payments made overseas, are under the administrative authority of the SEC under the amended provisions of the Securities Exchange Act of 1934. The enforcement of the criminal penalties for corporate "bribery" of foreign officials as proscribed under the Act is under the prosecutorial authority of the Department of Justice.

Domestic International Sales Corporation (DISCs) and Foreign Sales Corporations (FSCs)

The Internal Revenue Code's Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) provisions permit the special tax treatment of U.S. export earnings. The DISC provisions were enacted in 1971 as part of the Revenue Act of 1971.[6] FSC was enacted under the provisions of the Deficit Reduction Act of 1984 [7] and largely supplanted DISC.

The 1971 DISC legislation responded to a perceived need to stimulate U.S. exports in the face of steadily declining trade surpluses and to encourage U.S. manufacturers to locate their export-oriented production facilities in the United States rather than abroad. Other U.S. tax laws—specifically, the deferral of U.S. taxes on income earned by foreign subsidiaries—were seen as creating an incentive for locating production offshore. In addition, other countries were believed to be more generous than the United States in their tax treatment of export earnings, and the DISC legislation was considered necessary to put U.S. exporters on an equal footing with foreign competitors.

The DISC benefit consisted of the deferral of a firm's Federal income tax liability on part of its export earnings. In general, a firm was allowed to allocate a portion of its export income to a specially-defined subsidiary known as a Domestic International Sales Corporation. The DISC itself was tax-exempt but the parent firm was taxed at its normal rate on income distributed to it from its DISC. For the parent corporation, therefore, the tax liability on part of the income retained by the DISC was deferred until the parent received it as a distribution. The size of the tax benefit was constrained by the amount of income a DISC was allowed to retain. In general, to qualify for tax exemption, a DISC had to be incorporated in the United States and had to satisfy certain tests relating to the extent of its export activity.

The DISC provisions were amended in 1974 to enable a financing corporation to qualify as a DISC.[8] The Tax Reduction Act of 1975 [9] denied DISC benefits for the export of natural resources and energy products and for products subject to export control under the Export Control Act of 1969.

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[6] Public Law 92-178; Internal Revenue Code secs. 991-7.

[7] Public Law 98-369; Internal Revenue Code secs. 921-7.

[8] Public Law 93-482; approved October 26, 1974.

[9] Public Law 94-12, approved March 29, 1975.

Proponents of DISC argued that the provision provided a significant impetus to U.S. exports; opponents argued that DISC's revenue cost was high and its impact on exports minimal. Partly in response to such criticisms, the size of the DISC benefit was curtailed by the Tax Reform Act of 1976 [10] and again by the Tax Equity and Fiscal Responsibility Act of 1982.[11]

In December 1981, the GATT Council formally adopted four GATT panel reports issued in 1976, finding the DISC and the tax practices of France, Belgium and the Netherlands in violation of GATT rules on the tax treatment of export earnings. In the case of the DISC, the failure to collect interest on the deferred taxes was judged to be an export subsidy.

In order to bring U.S. practices into compliance with GATT, the Reagan administration proposed and Congress adopted a revenue-neutral replacement for the DISC in 1984.

The Deficit Reduction Act of 1984 [12] repealed the DISC provisions for all except small businesses, as defined by the Act. The Act instead provides for the establishment of a Foreign Sales Corporation (FSC), and exempts from tax a portion of the export income of a FSC if certain foreign presence and economic process tests are met. In general, in order to qualify for partial tax exemption, a FSC must conduct a specified amount of its economic activities outside the United States, management of the FSC must take place outside the United States, arms-length pricing rules must be adhered to, and other requirements satisfied.

The Deficit Reduction Act further provides special rules for small businesses which allow U.S. exporters with relatively small export gross receipts to elect to be either a small DISC or a small FSC. A small DISC may defer income from $10 million or less of export gross receipts, but an interest charge tied to the T-bill rate is imposed on the taxes deferred. FSC benefits are available for up to $5 million of the export gross receipts of a firm that elects to be a small FSC. A small FSC is exempt from the foreign presence and economic process requirements but must meet the other tests established by the Deficit Reduction Act to qualify as a FSC. The 1984 Act forgives all taxes deferred on income accumulated by DISC's in existence on December 31, 1984. The new FSC provisions apply to all transactions after December 31, 1984.

Export Trading Companies

EXPORT TRADING COMPANY ACT OF 1982

The Export Trading Company Act of 1982 (ETC Act),[13] as amended by the Omnibus Trade and Competitiveness Act of

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[10] Public Law 94-455, approved October 4, 1976.

[11] Public Law 97-248, approved September 3, 1982.

[12] Public Law 98-369, approved July 18, 1984.

[13] Public Law 97-290, approved October 8, 1982, U.S.C. 4001-4003, 12 U.S.C. 1841-1843, 15 U.S.C. 4011-4021.

1988,[14] provides for the establishment of an export trading company for the purpose of providing export trade services to U.S. exporting businesses. The basic purpose of the Export Trading Company Act is to stimulate U.S. exports by encouraging and facilitating exporting by small- and medium-sized businesses. Historically, exporting has been conducted by only a fraction of the U.S. business community and generally by large firms. Most small- and medium-sized firms have relied on the vastness of the domestic market for their business expansion. Few such firms individually have the knowledge and expertise about selling overseas or have been able to afford the front-end costs associated with foreign market penetration, and generally do not have access to trade-related services (e.g., foreign market research, distribution, and financing) available to larger companies.

Export trading companies (ETC's) generally assume the risks associated with international trade by taking title to goods domestically and handling subsequent export operations. Economies of scale, not usually available to a small- or medium-sized company operating individually, are generated by ETC's because they export large volumes of products from many sources at lower per-unit costs through established networks of overseas offices, transportation, insurance, and warehouses.

The Export Trading Company Act of 1982 is intended to increase U.S. exports of goods and services by small- and medium-size businesses and encourage the formation of ETC's primarily by removing two impediments: (1) restrictions on trade financing and (2) uncertainty about the application of U.S. antitrust laws to export trade. The Webb-Pomerene Act of 1918 [15] permitted U.S. firms to form export associations, but did not include trade in services and did not provide the kind of certainty from antitrust prosecution that encouraged ETC formation. U.S. banking laws have traditionally imposed strict separation between banks and commercial enterprises, thus precluding banking participation in ETC's.

Bank participation

Title II of the ETC Act encourages banking organization participation in ETC's and, thus, the use of bank financial resources while limiting bank investment in such entities. It amends the Bank Holding Company Act to allow bank holding companies and bankers' banks to invest in one or more ETC's which meet the statutory definition under title II, provided the total investments do not exceed 5 percent of consolidated bank capital and surplus. Banks may extend credits to ETC's providing such loans do not exceed 10 percent of the bank's capital and surplus. Banking organizations may own up to 100 percent equity in an ETC. Banks must notify the Federal Reserve Board (FRB) at least 60 days prior to investing and may proceed with the intended investment if the FRB raises no objection within that period.

Banks are generally subject to the collateral requirements in the Federal Reserve Act for loans to the ETC unless the FRB grants a waiver. It may not extend credit to the ETC or the ETC's customers on terms more favorable than those afforded similar borrowers in similar circumstances.

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[14] Public Law 100-418, approved August 23, 1988, 12 U.S.C. 1841.

[15] Public Law 65-126, ch. 50, approved April 10, 1918, 15 U.S.C. 61-65.

The ETC is intended to provide export trade services, not to be a manufacturer or agricultural producer, except for incidental product modification (e.g., repackaging) necessary to facilitate foreign sales. It cannot act as principal agent or broker on risks located in, or activities performed in, the United States. The ETC must be exclusively engaged in activities related to international trade and organized and operated principally for purposes of exporting U.S. goods and services.

Loan guarantee program

Title II of the ETC Act also establishes a program for loan guarantees by the Export-Import Bank of the United States (Eximbank) to ETC's or other exporters. The objective is to provide access to working capital loans that (1) otherwise would not have been provided without Eximbank assistance, and (2) without which the ETC or exporter would not be able to support exports of products that are unlikely to be sold abroad through other means. Guarantees cover only loans used for a specific export-related activity, are for 90 percent of the principal amount of the loan, and generally have a term of one to twelve months.

Antitrust provisions

Titles III and IV of the ETC Act address the problem of uncertainty about the application of U.S. antitrust laws to export trade, and are applicable to all exporters, not just ETCs. Title III provides certification procedures under which any person engaged in export trade can determine in advance whether proposed export conduct qualifies for specific antitrust protection. Title IV clarifies the jurisdictional reach of the Sherman Antitrust Act [16] and the Federal Trade Commission Act [17] to export trade.

A certification of review is issued by the Secretary of Commerce with the concurrence of the Department of Justice which protects its holder and the members identified in the certificate from private treble damage actions and government criminal and civil suits under U.S. Federal and state antitrust laws for the export conduct specified in the certificate. Any person who has been injured by the certified conduct, however, may bring a suit for actual damages under certain conditions.

To be certified, the proposed export trade, export trade activities, and methods of operation must meet the following four criteria:

1. It cannot result in substantial lessening of competition or restraint of trade in the United States, nor a substantial restraint of the export trade of any competitor;
2. It may not unreasonably enhance, stabilize, or depress prices within the United States;
3. It cannot constitute unfair methods of competition against competitors; and

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[16] Act of July 2, 1890, ch. 647, 15 U.S.C. 1–7.

[17] Public Law 63-203. ch. 311, approved September 26, 1914, 15 U.S.C. 41–51.

4. It cannot include any act that may reasonably be expected to result in the sale or resale in the United States of the goods or services exported.

Export Financing

EXPORT-IMPORT BANK

The Export-Import Bank of the United States (Eximbank), an independent U.S. Government agency, has provided financing for exports of U.S. origin or manufacture for more than 50 years. Created in 1934 by Presidential Executive Order, the Bank was established on a statutory basis as a U.S. Government corporation in 1945 with passage of the Export-Import Bank Act.[18] Since then Eximbank's operating charter has been renewed periodically, most recently on October 15, 1986, when it received a 6-year extension until September 30, 1992.

The Eximbank is part of the Federal budget and each year the Congress sets limits on the Bank's authorization of loans, guarantees and insurance, and on the amount of administrative and entertainment expenses the Bank can issue. The Eximbank does not receive appropriations of taxpayers' funds from the Congress. Its lending needs are met by borrowings from the Treasury and Federal Financing Bank (at current market rates for government debt), fees, and repayments on existing loans. The Bank is authorized to issue obligations for purchase by the Treasury, but the direct Treasury borrowing limit on such obligations outstanding at any one time cannot exceed $6 billion. The Eximbank cannot have outstanding at any one time loans, guarantees, and insurance which exceed an aggregate $40 billion.

The Bank was capitalized in 1945 with a $1 billion subscription by the United States. Since that time, it has supported more than $160 billion in U.S. export sales, paid dividends to the Treasury amounting to more than $2 billion, and produced retained earnings of more than $2 billion. The disparity between costs of Eximbank borrowings and the income from operations (despite the increases in rates within the loan limits allowable to remain competitive) has led to Eximbank losses in recent fiscal years. The Export-Import Bank Act amendments of 1986 included an authorization of $145 million in fiscal year 1987 to cover the subsidy cost of new direct loans, as a permanent addition to Bank capital, representing the subsidy cost of a $1.8 billion direct loan program.

The Bank is managed by a Board of Directors, including five full-time Directors appointed by the President and confirmed by the Senate, and two ex officio, non-voting members, the Secretary of Commerce and the U.S. Trade Representative. No more than three of the full-time Directors can be from the same party. The Directors serve for fixed, staggered 4-year terms.

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[18] Public Law 79-173, approved July 12, 1945, amended by Public Law 99-472, P.L. 99-509, and P.L. 100-418, approved August 23, 1988, 12 U.S.C. 635.

Policy objectives and guidelines

The statutory objectives and purposes of the Eximbank are "to aid in financing and to facilitate export and imports and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof." In recent years governments of other major exporting countries have subsidized their exporters through generous financing practices, such as the mixing of aid and commercial credits, offering of guarantees to offset the impact of inflation and foreign exchange risks, and the use of artificially low interest rates. An International Arrangement on Guidelines for Officially Supported Export Credits [19] was adopted in April 1978 by 22 major exporting nations under the auspices of the Organization for Economic Cooperation and Development, establishing minimum cash payments and interest rates, creating uniform maximum repayment periods, and defining other lending standards. More recent negotiations have significantly reduced the subsidy element in official export credits, and are seeking restrictions on the use of tied aid and partially untied aid credits for commercial purposes.

Under the most recent amendments passed in 1983 and 1986 to the Export-Import Bank Act of 1945, Eximbank has been directed as its primary mandate to offer financing at rates and terms which are fully competitive with foreign official export credit terms and consistent with international agreements. Terms and conditions do not need to be identical in all respects to those offered by foreign countries as long as the effect of such terms and conditions is to neutralize financing offered by Eximbank's counterpart. Eximbank has also been directed to establish a program of tied aid credit to counter the tied aid credits offered by other export credit agencies.

The Eximbank is required by statute to give full consideration to any potential adverse impact of a loan guarantee on U.S. employment, the competitive position of U.S. industry, and on the availability of materials in short supply. Amendments in 1986 include a prohibition on extension of direct credits or financial guarantees for establishing or expanding production of any commodity for export by a foreign country if the commodity is likely to be in world surplus or is expected to compete with U.S. production and will cause substantial injury to U.S. producers of that product, unless the injury is outweighed by benefits to U.S. industry and employment. Special consideration is given to exports that generate production and jobs in depressed areas and to strengthening the competitive position of U.S. exporters.

Certain other statutory restrictions also apply to Eximbank activities. For example, the Bank is prohibited or restricted from doing business with "Marxist-Leninist" countries (including the Soviet Union unless the President makes a national interest determination), South Africa, and Angola. The Bank must consider the environmental effects abroad of certain projects, such as nuclear power projects and those involving highly toxic materials that may endanger public health.

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[19] OECD Doc. No. TD/Consensus/78.4 (April 1978), revised TD/Consensus/82.41 (December 1982).

Eximbank programs

Eximbank major program operations generally fall into two financing categories. The first is the buyer credit or project financing program, which provides direct loans at fixed interest rates and long terms (normally more than 5 years) to a public or private overseas buyer, and/or financial guarantees ensuring repayment of private source loans for heavy capital equipment and capital-intensive projects.

Project financing supports the exports of "turnkey" projects such as manufacturing, electric power and petrochemical plants, and large mining and construction operations. This program also covers heavy capital equipment exports such as commercial jet aircraft and locomotives. The largest part of direct project financing (in a typical year as much as 70 percent (including aircraft) or 90 percent (excluding aircraft)) assists in financing U.S. exports to creditworthy buyers in developing countries.

The second major program involves supplier credit programs, which offer assistance through medium-term commercial bank guarantees, short- and medium-term export credit insurance, and medium-term and small business credit programs. The supplier credit program is designed to support less costly transactions where repayment periods are either short-term (up to 6 months) or medium-term (from 6 months to 5 years).[20] Amendments in 1986 are intended to improve the competitiveness of and access to medium-term programs, and authorize the unrestricted transferability of insured or guaranteed medium and long-term obligations.

Several other programs have been introduced more recently: (1) services specifically designed for small exporters; (2) special facilities to support agricultural exports; (3) a lease guarantee program; (4) an overseas dealer/distributor program; (5) in special circumstances, guarantees of export credit denominated in convertible currencies other than U.S. dollars; (6) guarantees of loans to export trading companies; (7) multiple exporter risk protection coverage; (8) interest subsidy payments; and (9) a tied aid credit program.

Under the Export-Import Bank Amendments of 1978, the Bank is permitted to offer financing support to U.S. suppliers who would otherwise lose sales as a result of credit subsidies from foreign governments to support sales in the U.S. market by foreign producers. As amended in 1986, the program extends to credits irrespective of whether they are being offered by governments which are signatories to OECD export financing agreements.

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[20] Under the commercial bank guarantee program, the Bank guarantees repayment of medium-term export obligations acquired by U.S. financial institutions from U.S. exporters. The purpose of the program is to facilitate the export of U.S. capital and quasi-capital goods through the U.S. commercial banking system. The Bank assumes commerical and political risks that U.S. exporters or private financial institutions are unwilling or unable to undertake.

The export credit insurance program is operated in cooperation with a private association, the Foreign Credit Insurance Association, a group of U.S. property, casualty, and marine insurance companies. It sells and services export credit insurance policies which protect an exporter against non-payment for its foreign receivables and thereby encourages the exporter to offer competitive terms of repayment to foreign buyers.

Under the medium-term credit program, Eximbank makes a fixed interest rate loan commitment to a U.S. bank that is financing an export sale that faces subsidized, officially supported foreign export credit competition and lends its funds to the bank.

The small business credit program enables U.S. commercial banks to extend fixed-rate, medium-term export loans by providing standby assurance that the bank can borrow from the Eximbank against the outstanding value of a medium-term, foreign debt obligation. Such fixed-rate financing is necessary to obtain a foreign order but commercial banks are reluctant to provide them on medium-term transactions because of fluctuations in their cost of funds.

The 1986 amendments authorize the Bank to make interest subsidy payments (the so-called I-Match program) to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is granted for 2 years, can become effective only if three conditions are met; first, the funds for the interest subsidy payments must be appropriated; second, loan guarantees accompanying these payments must not be scored as budget authority; and third, the Bank must have been authorized a direct loan budget of at least $700 million.

The 1986 amendments also established a Tied Aid Credit War Chest in the Bank, with $300 million authorized to be appropriated in each of fiscal years 1987 and 1988, extended through 1989 by the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418), to support efforts by the Secretary of the Treasury to negotiate a comprehensive agreement in the OECD to limit the trade-distorting practice of mixing foreign aid with export credits. The Chest may be used either to take markets away from other countries or to protect U.S. exports facing unfair mixed credit financing.

Operating guidelines

The Export-Import Bank Act, as amended, states that the Bank "should supplement and encourage, and not compete with private capital" or with programs of the Commodity Credit Corporation. The Bank does not provide credit support for transactions which will proceed without its assistance. Generally, the Bank will not provide lines of credit, credit support for sales to developed or rich countries, sales of military goods or services, or credit for sales of older generation aircraft.

A cornerstone of Eximbank lending criteria since its inception (and a statutory requirement) is obtaining reasonable assurance of repayment. The Bank normally requires that overseas buyers make cash payments of at least 15 percent of the U.S. contract price. Guarantees of repayment may also be required either from a goverment institution in the buyer's country or from a major lending institution.

The percentage of Eximbank financing (generally between 65 percent and 85 percent) varies by type and case to case, depending particularly on the existence and nature of officially supported foreign competition. The Eximbank loans money at fixed interest rates which are reviewed quarterly by the Board of Directors and revised where appropriate within international Arrangement levels.

AGRICULTURE EXPORT SALES

To help finance sales of farm commodities abroad, the U.S. Department of Agriculture administers several sales and credit programs. These include the concessional sales program under the authority of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, commonly known as Public Law 480,[21] and the commercial credit programs of the Commodity Credit Corporation (CCC) authorized by the Commodity Credit Corporation Charter Act of 1948 [22] and the Food for Peace Act of 1966.[23] In addition, the Food Security Act of 1985 [24] included a trade title designed to help reverse the decline in U.S. agriculture export sales, including authorization of an export payment-in-kind program.

PUBLIC LAW 480

Public Law 480 was extended for 5 years to December 31, 1990, by the Food Security Act of 1985. According to this Act, the purpose of Public Law 480 is "to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition, and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; and to promote in other ways the foreign policy of the United States."

Public Law 480 sales are generally limited to low-income countries. Title I of Public Law 480 authorizes sales of U.S. agricultural commodities on concessional credit terms. Under this title, the United States extends long-term dollar credits to eligible countries at very low interest rates with repayment periods varying from 20 to 40 years. Title III of the Act allows recipient countries to use the local currency proceeds from the domestic sale of commodities purchased under title I to promote their agricultural development, emphasizing aid to the rural poor. The money used to implement approved projects is considered as partial repayment of the title I debt to the United States. All sales agreements include provisions that safeguard normal U.S. trade channels and do not disrupt world prices or normal patterns of commercial trade with friendly countries.

COMMODITY CREDIT CORPORATION (CCC)

USDA, using the resources of the CCC, offers both commercial credit and export promotion programs designed to maintain and expand overseas markets for U.S. farm products.

In operating two Export Credit Guarantee Programs, the CCC guarantees U.S. banks against defaults on payments due from foreign banks on the agricultural export sales they finance. Guarantees are made against political risks such as warfare, expropriation, exchange controls, and other foreign government actions, and against economic risks such as a foreign bank failure or a country's debt repayment problems. The U.S. banks deal directly with foreign purchasers to set loan repayment terms and interest rates, but must meet certain requirements to qualify for CCC guarantees. The larger GSM–103 program guarantees credits for periods from 3 to 10 years, and is used to finance exports of livestock and poultry with longer production cycles.

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[21] Public Law 83-480, approved July 10, 1954, 7 U.S.C. 1701-1736d.

[22] Public Law 80-806, approved June 29, 1948, 15 U.S.C. 714-714p.

[23] Public Law 89-808, approved November 11, 1966.

[24] Public Law 99-198, approved December 23, 1985.

The Export Enhancement Program (EEP) makes USDA-acquired commodities available to private U.S. exporters to compensate them for making competitively-priced sales in overseas markets. Congress established the EEP in 1985 to counter other major exporters' use of subsidies to increase their agricultural exports.

The CCC also is authorized to carry out a direct sales program which permits the CCC to sell CCC-owned commodities at negotiated prices on a government-to-government basis or to voluntary agencies, and to barter surplus agricultural commodities for strategic materials for U.S. stockpiles. Currently, three other direct export credit sales programs are inactive.

FOOD SECURITY ACT OF 1985

In addition to lowering price supports on major export commodities to make U.S. products more price-competitive in world markets, the Food Security Act of 1985 contained a comprehensive trade title designed to help boost declining export levels. Its provisions continued or expanded the CCC credit and export promotion programs, and established certain other export promotion activities. Congress, however, increased its voice in how these programs are implemented by mandating certain program levels.

The trade title of the 1985 farm act, as amended by the Omnibus Trade and Competitiveness Act of 1988, requires a minimum of $5 billion annually in loan guarantees for the GSM–102 short-term credit guarantee program through FY90, and a maximum of $1 billion annually in guarantees for the GSM–103 intermediate guarantee program in FY89–90; increases the level of CCC-owned commodities available for EEP to a total $2.5 billion for the FY86–90 period; authorizes a minimum of $325 million in funds or USDA commodities annually for the targeted export program to counter unfair foreign trade practices; and mandates the export sale of at least 150,000 tons of CCC dairy products annually through FY90. The 1985 act also reauthorized the export credit revolving fund through FY90 and required the President to designate a special assistant for agricultural trade and aid.

Multilateral Export Control Enhancement

MULTILATERAL EXPORT CONTROL ENHANCEMENT AMENDMENTS ACT

The Multilateral Export Control Enhancement Amendments Act, sections 2441–2447 of the Omnibus Trade and Competitiveness Act of 1988,[25] provides retroactive sanctions against two companies for selling sensitive military-use technology to the Soviet Union and prospective sanctions authority for foreign violations of certain multilateral export control regulations. For a discussion of the prospective sanctions authority, see the Export Administration Act of 1979 in this chapter.

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[25] Public Law 100–418, approved August 23, 1988; 50 U.S.C. 2401a.

In response to the sale by Toshiba Machine Company of Japan and Kongsberg Trading Company of Norway of advanced milling machinery to the Soviet Union, the Congress passed the Multilateral Export Control Enhancement Amendments Act. Section 2443 of that Act requires the President to impose, for a period of three years, a ban on U.S. Government contracting with and procurement from the two companies named above and their parent companies. That section also requires the President to prohibit the importation of all products produced by Toshiba Machine Company and Kongsberg Trading Company for a period of three years. The sanctions required by section 2443 were imposed by President Reagan on December 27, 1988 [26] and will remain in effect until December 28, 1991.

Auto Parts

FAIR TRADE IN AUTO PARTS ACT OF 1988

The Fair Trade in Auto Parts Act of 1988, sections 2121–2125 of the Omnibus Trade and Competitiveness Act of 1988,[27] requires the Secretary of Commerce to establish an initiative to increase the sale of U.S.-made auto parts and accessories to Japanese markets, including to U.S. subsidiaries of Japanese firms. The Secretary also is required to establish a Special Advisory Committee to advise and assist the Secretary in carrying out the initiative to increase U.S. auto parts sales in Japanese markets. The authorities granted under sections 2121–2125 expire on December 31, 1993.

In response to low sales of U.S. auto parts and accessories to Japanese auto firms based both in Japan and in the United States, Congress adopted the Fair Trade in Auto Parts Act of 1988. This action followed negotiations in 1986–87 between the U.S. and Japanese governments aimed at improving U.S. access to the Japanese auto parts markets. The provision was intended to provide for a longer-term effort to increase data collection, information exchange, and generally improved U.S. market access in the Japanese auto parts sector.[28]

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[26] Executive Order 12661, dated December 27, 1988; "Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters."

[27] Public Law 100–418; approved August 23, 1988; 15 U.S.C. 4701.

[28] Market Oriented Sector Specific Talks on Transportation Machinery, initiated on August 26, 1986 and concluded on August 18, 1987.

Chapter 5: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

International Emergency Economic Powers Act

In 1977, Congress passed the International Emergency Economic Powers Act (IEEPA).[1] The Act grants the President authority to regulate a comprehensive range of financial and commercial transactions in which foreign parties are involved but allows the President to exercise this authority only in order "to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency . . . with respect to such threat."

Background

Public Law 95-223, of which IEEPA constitutes Title II, redefined the President's authorities to regulate international economic transactions in times of national emergency as well as war, until then provided by section 5(b) of the Trading with the Enemy Act (TWEA) (50 App. U.S.C. 5(b)), by eliminating TWEA's applicability to national emergencies [2] and instead providing such authorities in a separate statute of somewhat narrower scope and subject to congressional review.

The authorities granted to the President under IEEPA broadly parallel those contained in section 5(b) of the TWEA but are somewhat fewer and more circumscribed. While under the TWEA the existence of any declared national emergency, whether or not connected with the circumstances requiring emergency action, was used as the basis for such action, the IEEPA allows emergency measures against an external threat only if a national emergency has been declared with respect to the same threat. Furthermore, certain authorities contained in the TWEA and still applicable in times of war are not included in the IEEPA, such as the powers to vest foreign property, to regulate purely domestic transactions, to regulate gold or bullion, or to seize records. Nevertheless, the President's authorities under the IEEPA still remain extensive. The President may "by means of instructions, licenses, or otherwise . . . investigate, regulate, prevent, or prohibit" virtually any foreign economic transaction, from import or export of goods and currency to transfer of exchange or credit. The only international transactions exempted from this authority are personal communications not involving a transfer of anything of value and, except in certain circumstances, charitable donations of necessities of life to relieve human suffering.

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[1] Title II, Public Law 95-223, December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701-1706.

[2] Title I of Public Law 95-223 also provides for the continuation in force, through annual Presidential extensions, of certain measures implemented on the basis of national emergencies declared under the TWEA. For further detail, see section on the Trading With the Enemy Act.

IEEPA requires the President to consult with Congress, whenever possible before declaring a national emergency, and while it remains in force. Once a national emergency goes into effect, the President must submit to Congress a detailed report explaining and justifying his actions and listing the countries against which such actions are to be taken, and why.

Application

Since its enactment, the authority conferred by the IEEPA has been exercised on several occasions and for different purposes: to impose a variety of economic sanctions on a foreign country, and to continue in force the authority of the Export Administration Act while its statutory extension had not yet been enacted by the time the previous authority expired.

In response to the seizure of the American Embassy and hostages in Teheran, President Carter, using the IEEPA authority, on November 14, 1979, declared a national emergency and ordered the blocking of all property of the Government of Iran and of the Central Bank of Iran within the jurisdiction of the United States.[3] The measure and its later amendments were implemented through Iranian Assets Control Regulations (31 CFR 535). Sanctions against Iran were broadened on April 7, 1980,[4] and April 17, 1980,[5] to constitute eventually an embargo on all commercial, financial, and transportation transactions with Iran, with minimal exceptions. These restrictions were revoked by President Carter on January 19, 1981, after the release of the Teheran hostages, but the national emergency has remained in effect and has been extended every year since.[6]

On May 1, 1985, President Reagan, under his IEEPA powers, declared a national emergency because of "Nicaraguan Government's aggressive activities in Central America" and prohibited all imports of Nicaraguan goods and services, all exports to Nicaragua (other than those destined for the organized democratic resistance) and transactions related thereto, and all activities of Nicaraguan ships and aircraft at U.S. sea- and airports.[7] The declaration of emergency and the imposed sanctions have been extended annually.

IEEPA was also used by President Reagan to declare a national emergency with respect to South Africa because of its "policy and practice of apartheid" and impose, using also several other authorities, effective on October 11, 1985, an embargo on certain trade (including specifically the importation of krugerrands) and financial transactions with the Government of South Africa.[8] The embargo, implemented through South African Transactions Regulations (31 CFR 545), was later greatly expanded and additional economic sanctions were imposed by the Comprehensive Anti-Apartheid Act of 1986,[9] upon the enactment of which the President allowed the declaration of the South African emergency to expire.[10]

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[3] E.O. 12170, November 14, 1979, 44 F.R. 65729.

[4] E.O. 12205, April 7, 1980, 45 F.R. 24099.

[5] E.O. 12211, April 27, 1980, 45 F.R. 26685.

[6] Following Iranian attacks on U.S.-flag ships in the Iran-Iraq war, an embargo was reimposed on October 29, 1987 (E.O. 12613, 52 F.R. 41940), on imports of goods and services from Iran under the authority of section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9) and implemented through Iranian Transactions Regulations (31 CFR 560). The embargo has been extended and is still in force.

[7] E.O. 12513, May 1, 1985, 50 F.R. 18629. The embargo is implemented by Nicaraguan Trade Control Regulations (31 CFR 540).

[8] E.O. 12532, September 9, 1985, 50 F.R. 36861; E.O. 12535, October 1, 1985, 50 F.R. 40325.

President Reagan similarly used the IEEPA authority, among several others, to imposed economic sanctions on Libya because of Libyan-supported terrorist attacks on the Rome and Vienna airports. On January 7, 1986, he declared a national emergency and prohibited all trade (with minimal exceptions) and transportation transactions with Libya, extension of credit to the Libyan Government, and personal travel to or within Libya.[11] On the following day, he ordered the blocking of all property and interests of the Libyan Government and its instrumentalities in the United States.[12] These measures are implemented by Libyan Sanctions Regulations (31 CFR 550). The emergency with respect to Libya and the sanctions have been continued in force through annual extensions.

Again, on April 8, 1988, under the IEEPA authority, President Reagan declared a national emergency with respect to Panama and ordered the imposition of economic sanctions on that country [13] because of "the actions of Manuel Antonio Noriega and Manuel Solis Palma, to challenge the duly constituted authorities of the Government of Panama." The order involved the blocking of all property and interests of the Government of Panama, including all its agencies and instrumentalities and controlled entities, that are or may come within the United States. The blocking applies specifically to payments of transfers of any kind or financial transactions for the benefit of the Noriega-Solis regime from the United States or by any physical or legal U.S. person located in Panama. The order is implemented through Panamanian Transactions Regulations (31 CFR 565).

Just as the TWEA authority several times earlier, the IEEPA authority also has been used on two occasions to continue in force the administration of export controls when extensions of the Export Administration Act of 1979 (EAA) have not been enacted in time to continue the export control authority in force by statutory extension. Upon the expiration of the EAA on October 15, 1983, President Reagan used the IEEPA authority to declare a national emergency and to continue in force the existing regulations for the administration of export controls.[14] After the EAA was temporarily extended by law [15] retroactively to October 15, 1983, and through February 29, 1984, the President revoked its extension under the IEEPA and rescinded the declaration of economic emergency.[16] On February 29, 1984, the EAA was again extended by law [17] through

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[9] Pub. L. 99-440, October 2, 1986, 100 Stat. 1086, 22 U.S.C. 5001 et seq.

[10] Weekly Compilation of Presidential Documents, v. 23, no. 36, September 14, 1987, p. 997.

[11] E.O. 12543, January 7, 1986, 51 F.R. 875.

[12] E.O. 12544, January 8, 1986, 51 F.R. 1235.

[13] E.O. 12635, April 8, 1988, 53 F.R. 12134.

[14] E.O. 12444, October 14, 1983, 48 F.R. 48215.

[15] Public Law 98-207, December 5, 1983, 97 Stat. 1391.

[16] E.O. 12451, December 20, 1983, 48 F.R. 56563.

[17] Public Law 98-222, February 29, 1984, 98 Stat. 36.

March 30, 1984, when the authority for administering the export control provisions again had to be extended by the President under the IEEPA authority upon the declaration of a national economic emergency.[18] The extension and the declared emergency remained in force during the protracted, if unsuccessful, House-Senate attempts at resolving the disagreements on the reauthorization of the EAA during the 98th Congress, and in the 99th Congress until July 12, 1985, when the EAA was finally again extended by law [19] and the executive extension of export controls was revoked and the emergency rescinded.[20]

Trading With the Enemy Act

The Trading With the Enemy Act [21] prohibits trade with any enemy or ally of an enemy during time of war. From enactment in 1917 until 1977, the scope of the authority granted to the President under this Act was expanded to provide the statutory basis for control of domestic as well as international financial transactions and was not restricted to trading with "the enemy." In response to the use of the Act's authority under section 5(b) during peacetime for domestic purposes that were often unrelated to a preexisting declared state of emergency, Congress amended the Act in 1977. In 1977 Congress removed from the Trading With the Enemy Act the authority of the President to control economic transactions during peacetime emergencies.[22] Similar authorities, though more limited in scope and subject to the accountability and reporting requirements of the National Emergencies Act,[23] were conferred upon the President by the International Emergency Economic Powers Act, enacted in 1977 as Title II of Public Law 95-223.[24] Presidential authority during wartime to regulate and control foreign transactions and property interests were retained under the Trading With the Enemy Act. In addition, the 1977 legislation authorized the continuation of various foreign policy controls implemented under the Trading With the Enemy Act, such as trade embargoes and foreign assets control. The retention of such existing controls, however, was made subject to 1-year extensions conditioned upon a Presidential determination that the extension is in the national interest.

Background

The Trading With the Enemy Act was passed in 1917 "to define, regulate, and punish trading with the enemy." The Act was designed to provide a set of authorities for use by the President in time of war declared by Congress. In its original 19 sections, the Trading With the Enemy Act provided general prohibitions against trading with the enemy; authorized the President to regulate and prohibit international economic transactions by means of license or otherwise; established an office to administer U.S.-held foreign property; and set up procedures for claims to such property by nonenemy persons, among other provisions. The original 1917 Act appeared not to authorize the control of domestic transactions and limited its use to wartime exigencies.

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[18] E.O. 12470, March 30, 1984, 49 F.R. 13099.

[19] Export Administration Act of 1979, Reauthorization; Public Law 99-64, July 12, 1985, 99 Stat. 120.

[20] E.O. 12525, July 12, 1985, 50 F.R. 28757.

[21] Public Law 65-91, approved October 6, 1917, ch. 106, 40 Stat. 411, So App. U.S.C. 1-44.

[22] Public Law 95-223, title I, approved December 28, 1977.

[23] The National Emergencies Act provided a statutory role for Congress in the declaration and termination of national emergencies. Public Law 94-412, approved September 14, 1976, 90 Stat. 1255, 50 U.S.C. 1601 et seq.

[24] See discussion of International Emergency Economic Powers Act, supra.

Over the years, through use and amendment of section 5(b), the basic authorizing provision, the scope of Presidential actions under the Trading With the Enemy Act was greatly expanded. First, the Act was expanded to control domestic as well as international transactions. Second, the authorities of the Act were used to apply to presidentially declared periods of "national emergency" as well as war declared by Congress. From 1933, when Congress retroactively approved President Roosevelt's declaration of a national banking emergency by expanding the use of section 5(b) to include national emergencies, until 1977, when Congress amended section 5(b) by passage of title I of Pub. L. 95-223, the President was authorized in time of war or national emergency to:

—regulate or prohibit any transaction in foreign exchange, any banking transfer, and the importing or exporting of money or securities;
—prohibit the withdrawal from the United States of any property in which any foreign country or national has an interest;
—vest, or take title to, any such property; and
—use such property in the interest and for the benefit of the United States.

The Trading With the Enemy Act did not provide a statement of findings and standards to guide the administration of section 5(b). There was no provision in the Act for congressional participation or review or for Presidential reporting at specified periods for actions undertaken under section 5(b). There was no fixed time period for terminating a state of emergency. Nor was there any practical constraint on limiting actions taken under emergency authority to measures related to the emergency.

Application

By 1977 a state of national emergency had been declared by the President on four occasions and left unrescinded. In 1933 President Roosevelt declared a national emergency to close the banks temporarily and to issue emergency banking regulations. In 1950 President Truman declared a national emergency in connection with the Korean conflict. President Nixon declared a national emergency in 1970 to deal with the Post Office strike and another in 1971 based on the balance-of-payment crisis. As one measure to remedy this crisis, President Nixon at the same time imposed an import surcharge without specifically referring to section 5(b), but later did take recourse to it as an additional authority. The action was challenged in court.[25]

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[25] In mid-1974, the U.S. Customs Court found the President's action unconstitutional with respect to all invoked authorities, but this decision was later reversed on appeal with respect to section 5(b). *U.S. v. Yoshida International*, 526, F.2d 560 (C.C.P.A. 1975). The surcharge was terminated after having been in force for somewhat over 4 months, long before the lower court's decision.

Based on these states of emergency, Presidents have used the powers of section 5(b) to deal with a number of varied events. In 1940 and 1941, President Roosevelt used section 5(b) to freeze the U.S.-held assets of the Axis powers and countries occupied by them to prevent their falling into the hands of the enemy powers. In August 1941, President Roosevelt, under section 5(b) authority, ordered the imposition of consumer credit controls by the Federal Reserve Board as an anti-inflationary measure. These executive uses by President Roosevelt were retroactively ratified by Congress.

The 1950 Korean emergency has been used in conjunction with section 5(b) powers for a wide range of controls among them the imposition of a total embargo on transactions with China and North Korea in December 1950 which was extended to North Vietnam in May 1964 and to Cambodia and South Vietnam in April 1975.[26] In 1968, President Johnson, citing the authority of section 5(b) and the continued existence of the 1950 emergency, imposed foreign direct investment controls on U.S. investors. These controls remained in effect until they were eliminated by legislation in 1974. During the period 1969 through 1976, Presidents have invoked the 1950 and 1971 emergencies to extend temporarily export control regulations.

Four sets of regulations controlling international transactions with specific countries, imposed under the former national emergency authority of section 5(b) and during the Korean national emergency, by now rescinded emergencies declared thereunder, are at present in effect pursuant to the one-year extension authority of Title I of Public Law 95-223. First, under the Foreign Assets Control Regulations,[27] all transactions between the United States and North Korea, Vietnam, and Cambodia are prohibited unless licensed by the Department of the Treasury. The regulations also block all assets of those countries held in the United States.

Second, the Cuban Assets Control Regulations,[28] based on section 5(b) as well as on foreign assistance legislation, impose a similar ban on virtually all transactions with Cuba.

Third, Transaction Control Regulations,[29] prohibiting any person within the United States [30] from engaging in any trade or trade financing transaction involving transfer of strategic commodities from a foreign country to a Communist country, are also based on section 5(b) of the Trading With the Enemy Act.

Fourth, the wartime anti-Axis Foreign Funds Control Regulations,[31] issued under the authority of section 5(b), are still in effect. The regulations continue to block the assets of East Germany, Estonia, Latvia, and Lithuania pending the settlement of claims by U.S. citizens for compensation of property confiscated after the war by the governments of those countries.

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[26] In mid-1971, trade embargo on China was in practice lifted, and on January 31, 1980, the applicability of any restrictive measures imposed under section 5(b) was terminated with respect to China (45 F.R. 7224).

[27] 31 CFR Part 500.

[28] 31 CFR Part 515.

[29] 31 CFR Part 505.

[30] Any "person within the United States" includes foreign subsidiaries of U.S. firms.

[31] 31 CFR Part 520.

Narcotics Control Trade Act

The Drug Enforcement, Education, and Control Act of 1986[32] contains a number of measures to respond to the serious problem of illegal drug smuggling into the United States and the growing threat of foreign sourced drug production. Among these measures are revisions to many basic customs laws to deter illegal drug imports and to increase enforcement capabilities of the U.S. Customs Service against drug traffic.

Title IX of the Act amended the Trade Act of 1974 (P.L. 93-618) by adding Title VIII, entitled the "Narcotics Control Trade Act," to create new authority for the President to take appropriate trade actions as of March 1 of each year against uncooperative major drug-producing or drug-transit countries. Section 806 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,[33] and section 4408 of the Anti-Drug Abuse Act of 1988[34] expanded the sanctions available and the critieria for determining and certifying that a country has cooperated fully with the United States. Similar criteria apply under the Foreign Assistance Act of 1961 for denying foreign aid to uncooperative countries.

For every major drug-producing or drug-transit country, the President is required to deny to any or all of its products preferential tariff treatment under the Generalized System of Preferences, the Caribbean Basin Initiative, or any other law; to raise or impose duties of up to 50 percent ad valorem on any or all of its products; to suspend air carrier transportation to or from the United States and the country and to terminate any air service agreement with the country; to withdraw U.S. personnel and resources from participating in any arrangement with the country for customs preclearance; or to take any combination of these actions considered necessary to achieve the objectives of the Act.

Such sanctions do not apply if the President determines and certifies to the Congress, at the time the annual report required by section 481(e) of the Foreign Assistance Act of 1961 is submitted, that during the previous year the country has cooperated fully with the United States or has taken adequate steps on its own (1) in satisfying goals agreed to in a bilateral or multilateral narcotics agreement with the United States; (2) in preventing illegal drugs from being sold illegally to U.S. Government personnel or their dependents or from being transported into the United States; (3) in preventing and punishing the laundering of drug-related profits or monies; and (4) in preventing and punishing bribery and other public corruption which facilitate production, processing, or shipment of illegal drugs.

A country that would not otherwise qualify for certification may be exempted from sanctions if the President determines and certifies to the Congress that the vital national interests of the United States require that sanctions not be applied. A country designated as a major drug-producing or drug-transit country in the previous year may not be determined to be cooperating fully unless it has in place a bilateral or multilateral narcotics agreement.

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[32] Public Law 99-570, approved October 27, 1986.
[33] Public Law 100-204, approved December 22, 1987, 19 U.S.C. 2492.
[34] Public Law 100-690, approved November 18, 1988.

The Congress may disapprove the President's determination and sanctions be required through enactment of a joint resolution within 45 legislative days. Actions remain in effect until the President submits a certification of cooperation and Congress does not enact a joint resolution of disapproval within 45 legislative days.

In addition, section 803 prohibits the President from allocating any quota for imports of sugar to any country which has a government involved in illegal drug trade or which is failing to cooperate with the United States in narcotics enforcement activities.

Chapter 6: RECIPROCAL TRADE AGREEMENTS

Reciprocal Trade Agreement Authorities

Authority for the President to enter into reciprocal trade agreements with foreign governments consists primarily of general authorities under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 [1] to enter into multilateral or bilateral trade agreements to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. Section 1102 replaces similar authorities under section 102 of the Trade Act of 1974 [2] that expired on January 3, 1988. Except for the authority to proclaim modifications in U.S. tariffs under multilateral agreements, trade agreements entered into under section 1102 are subject to Congressional approval of implementing legislation under special expedited procedures. The basic purpose of the section 1102 authorities is to provide the means to achieve U.S. negotiating objectives set forth under section 1101 of the 1988 Act and to enable U.S. participation in the Uruguay Round of Multilateral Trade Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) launched in September, 1986.

In addition, there are special trade agreement authorities that apply in limited circumstances or to deal with specific situations: (1) trade agreements entered into under section 123 of the Trade Act of 1974,[3] as amended by the 1988 Act, to grant new concessions as compensation for import relief actions or any judicial or administrative tariff reclassification; (2) withdrawal, suspension, or modification of trade agreement obligations under section 125 of the Trade Act of 1974;[4] (3) trade agreements entered into under section 128 of the Trade Act of 1974,[5] as added by section 308 of the Trade and Tariff Act of 1984, concerning tariff treatment of certain semiconductor items; (4) agreements with major state trading regimes acceding to the GATT; (5) trade agreements and remedies under sections 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988 [6] to obtain more open foreign market access in telecommunications trade; and (6) bilateral trade agreements with certain Communist countries providing for nondiscriminatory (most-favored-nation) treatment under certain conditions.

GENERAL TARIFF AUTHORITY

Since enactment of the Reciprocal Trade Agreements Act of 1934 the Congress periodically has delegated authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations, without requiring further Congressional action. The most recent grant of such authority is contained in section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988.

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[1] Public Law 100-418, approved August 23, 1988, 19 U.S.C. 2902.
[2] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2112.
[3] Public Law 93-618, 19 U.S.C. 2133.
[4] Public Law 93-618, 19 U.S.C. 2135.
[5] Public Law 98-573, sec. 308.
[6] Public Law 100-418, 19 U.S.C. 3101.

Section 1102(a) grants the President authority to enter into multilateral tariff agreements with foreign countries until June 1, 1993, and to proclaim reductions in U.S. rates of duty required or appropriate to carry out such agreements, subject to the following limitations:

—Reductions of existing U.S. duties cannot exceed 50 percent of existing rates of duty, except that duties of 5 percent ad valorem or below may be reduced to zero.

—Staging authority requires that duty reductions on any article cannot exceed 3 percent ad valorem per year, or one-tenth of the total reduction, whichever is greater, except that staging is not required if the U.S. International Trade Commission determines there is no U.S. production of the article.

—Under rounding authority, annual duty reductions may exceed the limits by the lesser of the difference between the limit and the next lower whole number or one-half of one percent ad valorem in order to simplify computations.

There is no authority to proclaim increases in any rate of duty. Any duty reductions negotiated in a trade agreement that exceed 50 percent of an existing duty higher than 5 percent ad valorem or any tariff increases would have to be approved by the Congress under the expedited legislative procedures that apply to nontariff agreements.

NONTARIFF BARRIER AUTHORITY

Trade negotiations prior to the Tokyo Round concentrated primarily on reducing or eliminating tariffs. Relatively little effort and progress was made to reduce nontariff barriers or other trade-distorting measures such as subsidies. Section 102 of the Trade Act of 1974 resulted from considerable concern about the growing importance and proliferation of such practices to the detriment of U.S. export trade and the need to develop new or more adequate international trading rules and mechanisms for their discipline. The purpose of section 102 was (1) to make clear the importance of reducing, eliminating, or harmonizing nontariff barriers and other trade-distorting measures through a Congressional policy mandate and specific authority for the President to negotiate and enter into reciprocal nontariff barrier trade agreements as the major focus of the Tokyo Round of GATT Multilateral Trade Negotiations; (2) to expedite and reduce the uncertainties of the legislative process for approval and implementation of such trade agreements, thereby encouraging and facilitating negotiations with foreign governments; and (3) to increase and formalize the role of the Congress during the negotiating process and in the development of implementing legislation. The authority applied to U.S. foreign direct investment as well as to trade in both goods and services.

Section 102 of the Trade Act of 1974 authorized the President to enter into reciprocal trade agreements for 5 years, until January 3, 1980, subject to Congressional consultation requirements and approval of the agreements in implementing legislation considered under special expedited "fast track" procedures. Section 102 authority was used successfully to approve the agreements negotiated in the Tokyo Round and to make the changes in U.S. laws necessary for their domestic implementation under the Trade Agreements Act of 1979. That law extended the section 102 authority for an additional 8 years, until January 3, 1988, to enable the President to negotiate improvements or adjustments in existing agreements and to negotiate and enter into new agreements on nontariff measures not dealt with in the Tokyo Round.

Section 102 authority has been replaced by similar authority under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988. A trade agreement may be entered into under this authority only if it makes progress in meeting the applicable objectives set forth in section 1101 of the 1988 Act.

Section 1102(b) authorizes the President to enter into trade agreements with foreign countries providing for the reduction or elimination of any nontariff barriers or other distortions to trade, or for the prohibition of or limitations on the imposition of such barriers or distortions, before June 1, 1993. However, such agreements may be implemented under the special "fast track" Congressional approval procedure only if they are entered into before *June 1, 1991.* The basic purpose of the June 1, 1991 termination date is to coincide approximately with the targeted conclusion of the Uruguay Round of GATT Multilateral Trade Negotiations by the end of 1990 and to provide added incentive to meet that date. The midyear expiration of the authority also accommodates the consultation requirements under the "fast track" procedure while the Congress is in session. The President has to notify the Congress no later than March 1, 1991 of his intention to enter into a trade agreement by June 1.

The "fast track" implementation authority may be extended to trade agreements entered into after May 31, 1991 and before June 1, 1993, but only if the following requirements under section 1103(b) of the 1988 Act are met:

—By March 1, 1991, the President submits to the Congress a written report requesting the extension, together with (1) a description of all multilateral and bilateral trade agreements that have been negotiated under section 1102 and the anticipated schedule for submitting them for Congressional approval, (2) a description of the progress made in multilateral and bilateral negotiations in achieving U.S. purposes, policies, and objectives and a statement that such progress justifies continuation of the negotiations; and (3) a statement of the reasons why extensions is needed to complete the negotiations.

—By March 1, 1991, the Advisory Committee for Trade Policy and Negotiations submits a written report to the Congress of its views on the progress made in negotiations and on whether the extension requested by the President should be approved or disapproved.

—Neither House of the Congress adopts a resolution disapproving the extension before June 1, 1991.

BILATERAL TRADE AGREEMENT AUTHORITY

Section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988 authorizes the President to enter into bilateral tariff and nontariff agreements with foreign countries, subject to the same Congressional consultation requirements and special "fast track" procedures for approval of implementing legislation as apply to multilateral agreements. The authority to enter into bilateral trade agreements expires on June 1, 1991, but also is subject to the same automatic extension procedures until June 1, 1993 as apply to the multilateral authority.

The agreement may provide for the elimination or reduction of any U.S. duty or for the elimination or reduction of nontariff barriers or other trade distorting measures. No trade benefit under the agreement can be extended to a third country. The authority is similar to that which was used for the bilateral free trade agreements between the United States and Israel and the United States and Canada.

Three requirements must be met prior to the negotiation of a bilateral agreement:

1. The foreign country must request the negotiation of a bilateral trade agreement;
2. The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and
3. The President must provide written notice of the negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consult with these committees regarding the negotiation of an agreement. The negotiations may proceed unless either Committee disapproves the negotiations within 60 legislative days prior to the 90 calendar day advance notice required of entry into an agreement.

TRADE AGREEMENT IMPLEMENTATION PROCEDURES

In contrast to traditional tariff proclamation authority, nontariff barrier agreements entered into under section 1102(b) and bilateral trade agreements entered into under section 1102(c) authority under the 1988 Act cannot enter into force for the United States and become binding as a matter of domestic law unless and until the President complies with specific requirements for consultation with the Congress and implementing legislation approving the agreement and any changes in U.S. law is enacted into law. Sections 1102(d) and 1103 of the 1988 Act [7] and sections 151–154 of the 1974 Act [8] prescribe the following procedures for Congressional approval:

1. Before entering into any trade agreement, the President must consult with the House Committee on Ways and Means, the Senate Committee on Finance, and with each other committee in the House and Senate with jurisdiction over legislation involving subject matter affected by the agreement. The consultation includes (a) the nature of the agreement; (b) how and to what extent the agreement will achieve applicable pur-

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[7] Public Law 100-418, 19 U.S.C. 2903

[8] Public Law 93-618, 19 U.S.C. 2191.

poses, policies, and objectives; and (3) all matters relating to agreement implementation.

2. The President must give the Congress at least 90 calendar days advance notice of his intention to enter into a trade agreement, and promptly publish the intention in the Federal Register. The purpose of this notice period is to provide the Congressional committees of jurisdiction an opportunity to review the proposed agreement before it is signed, to determine the changes in U.S. laws that will be necessary or appropriate to implement the obligations under the agreement, and to meet with Administration officials to develop the the text of an acceptable implementing bill.

3. After entering into the agreement, the President must submit a copy of the final legal text to the Congress, together with a draft implementing bill, a statement of any administrative action proposed to implement the agreement, and supporting information ((a) an explanation of how the bill and proposed administrative action will change or affect existing law; and (b) a statement asserting that the agreement makes progress in achieving applicable purposes, policies, and objectives; the reasons the agreement makes such progress and why and to what extent it does not achieve other purposes, policies, and objectives; how the agreement serves the interests of U.S. commerce; why the implementing bill and proposed administrative action are required or appropriate to carry out the agreement; efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased monetary stability; and the extent, if any, to which each foreign party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement and how the agreement applies to or affects purchases and sales by such enterprises).

There is no statutory time limit for submission of the agreement and draft bill after entry into the agreement. The timetable is worked out between the Congressional leadership and the Administration to accommodate the need for committees of jurisdiction to have adequate opportunity to develop an acceptable draft bill text while also ensuring expeditious formal action on the actual implementing legislation.

4. The implementing bill is introduced in both Houses of Congress on the same day it is submitted by the President and referred to the committees of jurisdiction. The committees have 45 legislative days in which to report the bill; they are discharged automatically from further consideration after that period.

5. Each House votes on the bill within 15 legislative days after the measure has been received from the committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order.

No amendments to the implementing bill are in order in either the House or the Senate once the bill has been introduced; the committee and floor actions in the House and Senate consist of "up or down" votes on the bill as introduced. The total maximum period for Congressional consideration from date of introduction is 60 legislative days if the bill is not a revenue measure. Since the Senate must act on a House-passed revenue bill, the maximum period for Congressional consideration of a revenue implementing bill from date of introduction is 90 legislative days (15 additional days for Senate committee action on the House-passed measure and 15 additional days for Senate floor action). After the legislation is signed by the President, the agreement goes into effect under the terms of the agreement and the implementing bill.

Special "fast track" procedures also apply to implementation of changes in existing trade agreements, including certain specified provisions in the U.S. bilateral trade agreements with Israel and Canada. Section 3(c) of the Trade Agreements Act of 1979[9] requires the President to submit a draft bill and statement of any administrative action to the Congress whenever he determines it is necessary or appropriate to amend, repeal, or enact a statute to implement any requirement, amendment, or recommendation concerning an agreement. Procedures and requirements similar to sections 1102(d) and 1103 of the 1988 Act and 151-154 of the 1974 Act apply, except the President is required to consult at least 30 days, rather than 90 days, in advance with the House Committee on Ways and Means and the Senate Committee on Finance and any other committees of jurisdiction on the subject matter and implementation.

Although statutory, the legislative procedures were enacted as an exercise of the rulemaking powers of each House of Congress, and are part of each House's rules. The procedures may be changed in the same manner as any other rules.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which often involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance of formal Congressional action. At the same time, the procedure ensures certain and expeditious action on the results of the negotiation and on the implementing bill with no amendments.

Section 1103(c) of the 1988 Act instituted a "reverse fast track" procedure that terminates the application of that special procedure for the approval of trade agreements if both the Committee on Ways and Means and the Committee on Rules in the House and the Committee on Finance in the Senate report, and both the House and Senate separately pass, resolutions of disapproval within any 60 legislative day period. The basis for the disapproval must be failure or refusal of the U.S. Trade Representative (USTR) to consult with the Congress on trade negotiations and trade agreements as set forth in the consultation requirements. The "fast track" procedure applies to floor consideration of the resolution, which is nonamendable.

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[9] Public Law 96-39, approved July 26, 1979, 19 U.S.C. 2504.

TRADE NEGOTIATING OBJECTIVES

Section 1101 of the Omnibus Trade and Competitiveness Act of 1988[10] sets forth overall and principal trade negotiating objectives of the United States. Any multilateral or bilateral trade agreement entered into under the authorities of section 1102 of the 1988 Act must make progress in meeting the applicable objectives described in section 1101.

The overall U.S. trade negotiating objectives are to obtain—

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(3) a more effective system of international trading disciplines and procedures.

The principal U.S. trade negotiating objectives include—

(1) more effective and expeditious dispute settlement;

(2) improvement of the GATT and multilateral trade negotiation agreements, including improved operation and expanded coverage and country participation;

(3) broader application of the principle of transparency;

(4) assumption of equivalent obligations and provision of reciprocal benefits by developing countries;

(5) rules to address large and persistent global current account imbalances of countries;

(6) mechanisms to assure greater trade and monetary coordination;

(7) more open and fair conditions of trade in agricultural commodities;

(8) improvement of rules and enforcement to discipline unfair trade practices;

(9) reduction or elimination of barriers and agreed rules for trade in services;

(10) adequate laws and standards and effective enforcement of intellectual property rights;

(11) reduction or elimination of barriers and agreed rules on foreign direct investment;

(12) improved and expanded rules and procedures on safeguard measures;

(13) reduction or elimination of specific tariff and nontariff trade barriers;

(14) provisions concerning the relationship between worker rights and international trade;

(15) elimination or reduction of barriers to U.S. access to foreign high technology; and

(16) revision of GATT rules on the treatment of border tax adjustments.

In addition, section 1124 of the 1988 Act[11] requires the Secretary of the Treasury to take action to initiate bilateral currency negotiations on an expedited basis with a foreign party to trade agreement negotiations if the Secretary advises the President during the course of those negotiations that the country satisfies the criteria under section 3004(b) of the 1988 Act relating to exchange rate manipulation.

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[10] Public Law 100-418, 19 U.S.C 2901.

[11] Public Law 100-418, 22 U.S.C. 5304 note.

Section 1105(b) of the 1988 Act[12] requires the President to determine before June 1, 1993 (the final expiration date of trade agreement authority) whether any major industrial country has failed to make trade agreement concessions which provide competitive opportunities for the United States substantially equivalent to such concessions provided by the United States. If the determination is affirmative with respect to any country, the President must recommend to the Congress legislation to terminate or deny trade agreement concessions in order to restore equivalence.

Identification of foreign trade barriers

Section 181 of the Trade Act of 1974,[13] added by section 303 of the Trade and Tariff Act of 1984, requires an annual report on foreign trade barriers and their impact, known as the National Trade Estimates report. The USTR, through the interagency trade mechanism, must identify, analyze, and estimate the impact on U.S. commerce of foreign acts, policies, and practices which constitute significant barriers to or distortions of U.S. exports of goods or services and U.S. foreign direct investment. The report must also include information on any action taken, or reasons for no action taken, such as under section 301 or negotiations or consultations with foreign governments, to eliminate any measure identified. The report is submitted to the appropriate committees of the House and to the Senate Committee on Finance.

Section 182 of the Trade Act of 1974,[14] as added by section 1303 of the 1988 Act, requires the USTR to identify priority foreign countries that deny adequate and effective protection or fair and equitable market access for U.S. intellectual property rights, for purposes of action under section 301 (see further description under chapter 2.)

SPECIFIC TRADE AGREEMENT AUTHORITIES

Sections 123, 125, and 128 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988, contain authorities to enter into and/or to proclaim changes in U.S. duties under trade agreements in certain specific limited circumstances.

Compensation agreements

Section 123 of the Trade Act authorizes the President to enter into trade agreements granting new concessions and to proclaim modifications or continuation of existing duties or duty-free treatment as he determines required or appropriate as compensation to foreign countries for restrictions imposed as import relief under section 203 of the Trade Act or for any judicial or administrative tariff reclassification. No duty reduction can exceed 30 percent of its existing level. The purpose of such concessions is to meet international obligations under the GATT to maintain the general level of reciprocal and mutually advantageous concessions with countries whose trade is adversely affected by import relief measures or certain tariff reclassifications, and provide an alternative to the right of such countries under the GATT to take retaliatory action.

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[12] Public Law 100-418, 19 U.S.C. 2904.

[13] Public Law 93-618, 19 U.S.C. 2241 note.

[14] Public Law 93-618, 19 U.S.C. 2242.

Termination and withdrawal authority

Section 125 of the Trade Act contains the traditional requirement that every trade agreement entered into is subject to termination or withdrawal within 3 years after its effective date, or upon 6 months advance notice thereafter. The President may terminate any proclamation at any time.

Section 125(c) provides the President explicit domestic legal authority to proclaim increased duties or other import restrictions as he deems necessary or appropriate to implement U.S. international trade agreement rights or obligations to withdraw, suspend, or modify any trade agreement concessions.

Section 125(d) authorizes the President to withdraw, suspend, or modify substantially equivalent trade agreement obligations and proclaim increased duties or other import restrictions in response to withdrawal suspension, or modification by foreign countries of trade obligations benefitting the United States without granting adequate compensation (i.e., "self-compensation" authority). This authority was used in November 1982 by President Reagan to suspend most-favored-nation status for Poland indefinitely, based upon Poland's nonfulfillment of trade obligations undertaken in its accession to the GATT, and in view of increased repression of the Polish people by the martial law government.

No duty increase imposed under section 125(d) can exceed the higher of 50 percent or 20 percent ad valorem above the rate existing on January 1, 1975. Public hearings are required prior to taking any action, or promptly thereafter if expeditious action is necessary.

Section 125(e) requires duties or other import restrictions to remain in effect at negotiated levels for 1 year after U.S. termination of, or withdrawal from, a trade agreement, unless the President proclaims restoration of the previous level. The President must submit his recommendations to the Congress within 60 days as to the appropriate rates of duty on all affected articles. This provision prevents automatic, sudden "springbacks" to higher pre-agreement duties that could create serious economic impact.

High technology products

Section 128 of the Trade Act, as added by section 308 of the Trade and Tariff Act of 1984, authorizes the President to enter into bilateral or multilateral agreements necessary or appropriate to achieve trade negotiating objectives on high technology products and to proclaim the modification, elimination, or continuation of existing duty or duty-free treatment on specific semiconductor items during the 5-year period after date of enactment (i.e., until October 30, 1989) in order to implement such trade agreements.

Accession of major state trading regimes to the GATT

Section 1106 of the Omnibus Trade and Competitiveness Act of 1988 [15] requires the President to determine, before any major foreign country accedes to the GATT, whether state trading enterprises (1) account for a significant share of that country's exports or of its goods subject to import competition, and (2) whether those enterprises unduly burden or restrict or adversely affect U.S. trade or the U.S. economy or are likely to have such results. If both determinations are affirmative, the GATT cannot apply between the United States and that country until either (1) the country enters into an agreement with the United States for its state trading enterprises to operate in accordance with commercial considerations, or (2) Congress approves "fast track" legislation submitted by the President extending application of the GATT to the country.

TRADE NEGOTIATION PROCEDURAL REQUIREMENTS

Sections 131–135 of the Trade Act of 1974,[16] as amended by the Omnibus Trade and Competitiveness Act of 1988, require that certain procedures be followed in connection with any proposed trade agreement under section 123 of the 1974 Act or section 1102 of the 1988 Act authorities. These prenegotiation procedures require advice from the International Trade Commission on the probable economic effect of duty modifications on U.S. industries (section 131), advice from Executive branch agencies and other sources (section 132), public hearings (section 133), and advice from private sector advisory committees (section 135). In addition, Executive liaison with the Congress is required through Congressional designated official advisers to negotiations (section 161), transmittal of trade agreements (section 162), and annual reports on the trade agreements program and related matters (section 163). (See also discussion of Congress in chapter 7, infra).

Section 127 of the Trade Act of 1974 [17] requires the reservation from any negotiations involving reduction or elimination of duties or other import restrictions of any article while it is subject to an import relief action under section 203 of that Act or to a national security action under section 232 of the Trade Expansion Act of 1962, or if the President determines that the national security would be impaired.

TELECOMMUNICATIONS TRADE

The Telecommunications Trade Act of 1988, sections 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988, provides specific trade negotiating authority and remedies to address the lack of foreign market openness in telecommunications trade. The Telecommunications Act requires the U.S. Trade Representative to investigate and designate foreign priority countries, taking into account acts, policies, and practices that deny mutually advantageous market opportunities to U.S. telecommunications exporters and their subsidiaries. Countries may be added or deleted from the list of designated countries at any time.

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[15] Public Law 100–418, 19 U.S.C. 2905.
[16] Public Law 93–618, 19 U.S.C. 2151.
[17] Public Law 93–618, 19 U.S.C. 2137.

The President is required to negotiate with the priority countries, drawing from a list of general and specific negotiating objectives, for the purpose of entering into bilateral or multilateral agreements that provide mutually advantageous market opportunities. If no agreement is reached, the Act requires the President to take whatever authorized actions are appropriate and most likely to achieve the general negotiating objectives, as defined by the specific objectives established by the President. The actions authorized are broadly similar to authorities available to the USTR under section 301 of the Trade Act of 1974, as amended.

The Telecommunications Trade Act requires the USTR to conduct annual reviews to determine if a country has violated a telecommunications trade agreement or otherwise denies mutually advantageous market opportunities. In the case of an affirmative determination, it shall be treated as a trade agreement violation under section 301 of the Trade Act of 1974, as amended. In general, that section requires that in cases involving foreign violations of trade agreements or other "unjustifiable" practices, the USTR must take retaliatory action in an amount equivalent in value to the foreign burden or restriction on U.S. commerce. Certain waivers are available to the USTR, under which no retaliation is required.

Negotiating authority is provided concomitant with the general trade agreement authority provided in the Omnibus Trade and Competitiveness Act of 1988 (i.e., until 1993). Compensation authority also is provided, in the event that action is taken that violates U.S. obligations under the GATT.

Background

The Telecommunications Trade Act was intended to address the imbalance in market access for telecommunications goods and services between the United States and other countries that arose from increased deregulation of the U.S. market and court-ordered divestiture by American Telephone and Telegraph (AT&T) of its local operating companies on January 1, 1984. These actions resulted in a U.S. market virtually devoid of barriers to the entry of foreign competitors. At the same time, however, major foreign markets were characterized by strict government regulations, procurement policies, standards, and other practices that resulted in limited competitive opportunities for U.S. and other foreign firms in those markets. Although the period authorized for telecommunications trade negotiations is coterminus with multilateral trade negotiating authority in the 1988 Act, the separate negotiating authority is designed to permit increased flexibility in negotiating agreements in telecommunications trade. It permits the USTR to focus on priority countries whose barriers or practices pose the greatest impediment to market access by U.S. telecommunications firms and to tailor the negotiating priorities to address the specific circumstances in each country.

TRADE IN WINE

The Wine Equity and Export Expansion Act of 1984, title IX of the Tariff and Trade Act of 1984,[18] requires the U.S. Trade Representative to designate major wine trading countries which are potentially significant markets for U.S. wine and which maintain tariff and nontariff barriers to, or other distortions of, U.S. wine trade. The President must direct the USTR to consult with each country to seek the reduction or elimination of these barriers or distortions.

The President was also required to submit a report on each country to the House Committee on Ways and Means and the Senate Committee on Finance by November 30, 1985, containing: (1) a description of each trade barrier; (2) an assessment of whether each barrier is subject to an existing trade agreement; (3) action proposed or taken to reduce or eliminate the barriers, including action under the Trade Act of 1974; (4) reasons for not taking action; and (5) recommendations to Congress on any additional authority or action considered necessary and appropriate. Section 1125 of the Omnibus Trade and Competitiveness Act of 1988 [19] requires that the President update each of these major wine trading country reports and submit them to the two committees by September 23, 1989. Each report must contain: (1) a description of each tariff or nontariff barrier to trade in U.S. wine of that country on which the USTR has carried out consultations since the first report; (2) the status of these consultations; (3) and information, explanations, and recommendations based on developments since the first report. If the President determines that action is appropriate to respond to any unfair tariff or nontariff barrier on U.S. wine, he must take all appropriate and feasible action under the Trade Act of 1974. The President is also encouraged to initiate a wine export promotion program in cooperation with winery representatives.

Most-Favored-Nation Treatment

Nondiscriminatory treatment of trading partners has been a basic element of international trade for several centuries, although its scope and application has changed as the complexity of trade among the nations has increased. Such treatment and the principle underlying it usually are referred to as the "most-favored-nation" (MFN) treatment or prinicple. MFN has its origin in international commercial agreements, whereby the signatories extend to each other treatment in trade matters which is no less favorable than that accorded to a nation which is the "most favored" in this respect. The effect of such treatment is that all countries to which it applies are "the most favored" ones; hence, all are treated equally. In the context of U.S. tariff legislation, MFN treatment means that the products of a country given such treatment are subject to lower rates of duty (found in column 1 of the Harmonized Tariff Schedule (HTS) of the United States), which have resulted from various rounds of reciprocal tariff negotiations. Products from countries not eligible for MFN treatment under U.S. law are subject to higher rates of duty (found in column 2 of the HTS), which are essentially the rates of duty enacted by the Tariff Act of 1930.

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[18] Public Law 98-573, title IX, approved October 30, 1984.

[19] Public Law 100-418, 19 U.S.C. 2804 rate.

Prior to 1934, the United States accorded MFN treatment of its trading partners reciprocally only within the scope of commercial agreements containing an MFN clause. Section 350 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1934, in effect required the nondiscriminatory application to all countries of tariff and trade concessions granted in bilateral agreements, whether or not those countries had agreements with the United States containing the MFN clause.

By becoming a signatory of the General Agreement on Tariffs and Trade, the United States, as of January 1, 1948, also accepted the basic obligation of GATT Article I to accord unconditional MFN status to all other signatories. Thus, MFN status is extended by the United States to foreign countries as a matter not only of U.S. domestic law but also as an international obligation.

The unconditional and unlimited MFN policy was changed after the enactment of section 5 of the Trade Agreements Extension Act of 1951,[20] which directed the President to withdraw or suspend MFN status of the Soviet Union and all countries under the control of international communism. This action was prompted by the outbreak of the Korean War and the support that these countries were giving to North Korea and China. As implemented, this directive was applied to all then-existing Communist countries except Yugoslavia.

In December 1960, President Eisenhower revoked the suspension of MFN status with respect to Poland. President Kennedy suspended MFN status with respect to Cuba in May 1962, pursuant to a new legislative requirement contained in section 401 of the Tariff Classification Act of 1962.[21] The Tariff Classification Act also enacted the new Tariff Schedules of the United States, which for the first time, included in a general headnote a current list of countries without MFN status. Section 231 of the Trade Expansion Act of 1962,[22] as amended by section 402 of the Foreign Assistance Act of 1963, expanded the scope of the suspension of MFN status by applying it to "any country or area dominated by Communism," unless the President determines that the continued application of MFN status to Communist countries to which it was being applied at the time of the enactment of the Trade Expansion Act (i.e., to Poland and Yugoslavia) was in the national interest. The President made such a determination for both countries in March 1964.

The statutory provisions affecting the U.S. MFN policy and its practical implementation remained unchanged thereafter until enactment of the Trade Act of 1974, which contained the MFN provisions currently in force.

MFN principle under present law

The basic statute currently in force with respect to the MFN treatment of U.S. trading partners in section 126 of the Trade Act of 1974 [23] Section 126 contains the general requirement that any duty or other import restriction proclaimed to carry out any trade agreement apply on an MFN basis to products of all foreign countries, except as otherwise provided by law. The key provision embodying such exceptions with respect to tariff treatment is General Note 3(b) of the HTS, which contains the list of countries denied MFN tariff status with respect to their exports to the United States. (See list under chapter 1.)

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[20] Public Law 49-50, ch. 141, approved June 16, 1951.

[21] Public Law 87-566, approved May 24, 1962.

[22] Public Law 87-794, approved October 11, 1962, 19 U.S.C. 1351.

[23] Public Law 93-618, 19 U.S.C. 2136.

Other measures, most notably the Generalized System of Preferences, the Caribbean Basin Initiative, the United States-Israel Free Trade Area, the United States-Canada Free-Trade Agreement, and tariff treatment of least developed developing countries, provide specifically for application of preferential duty treatment for eligible countries and products under certain circumstances. This preferential tariff status grants terms which are more favorable than those granted to other countries which otherwise receive MFN treatment from the United States. (See separate sections and chapter 1.) With respect to nontariff measures, section 1103(a) of the Omnibus Trade and Tariff Act of 1988 requires the President to recommend to the Congress that benefits and obligations of a particular agreement apply solely to the parties to that agreement or not apply uniformly to all parties, if such application is consistent with the agreement. The Agreement on Subsidies and Countervailing Duties, negotiated during the Tokyo Round of GATT Multilateral Trade Negotiations, has been implemented by the United States on a non-MFN basis.

MFN application to Communist countries

The Trade Act of 1974 repealed section 231 of the Trade Expansion Act of 1962. Title IV of the Trade Act of 1974 [24] presently regulates the extension of MFN tariff treatment to Communist countries. Section 401 directs the President to continue to deny MFN treatment to any country to which it was denied on the date of the enactment of the Trade Act (i.e., all Communist countries as of January 3, 1975, except Poland and Yugoslavia.) Section 402 also denies MFN treatment (as well as access to U.S. Government credits, or credit or investment guarantees) to any "nonmarket economy" country ineligible for MFN treatment on the date of enactment of the Trade Act and which the President determines denies or seriously restricts or burdens its citizen's right to emigrate.

A country subject to the ban imposed by section 401 may gain MFN status only by fulfilling two basic conditions: (1) compliance with the requirements of the freedom-of-emigration provisions under section 402 of the Trade Act; and (2) conclusion of a bilateral commercial agreement with the United States under section 405 of the Trade Act providing reciprocal nondiscriminatory treatment.

The provisions of section 402, commonly referred to as the Jackson-Vanik amendment, allow a non-MFN, nonmarket economy country to receive MFN status (and access to U.S. financial facilities) only if the President determines that it permits free and unrestricted emigration of its citizens. Alternatively, the President may waive the requirements for full compliance of the particular country with the Jackson-Vanik requirements, if he determines that such waiver will substantially promote the objectives of the freedom-of-emigration provisions and if he has received assurances that the emigration practices of the country will henceforth lead substantially to the achievements of those objectives.

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[24] U.S.C. 2131.

The President's waiver authority must be renewed annually. The renewal procedure under section 402(d)(5) requires the President to submit to the Congress a recommendation for a 12-month extension of the waiver authority within 30 days prior to its expiration, together with his reasons for the recommendation and a determination with respect to each country for which a waiver is in effect that the continuation of the waiver will substantially promote the objectives of the freedom-of-emigration provision.

Under the terms of the 1974 Act, the extension of the waiver authority for an additional 12-month period is automatic unless either House of Congress adopts, within 60 days after the expiration of the previous authority period, a resolution disapproving such extension either generally or with respect to a specific country. The adoption of such resolution would immediately rescind the waiver authority (and with it the grant of the MFN status) with respect to countries covered by the resolution. [24a]

In addition to being contingent on compliance with the Jackson-Vanik requirements, Presidential authority to proclaim extension of MFN status to a country excluded under section 401 is subject and limited to the effective period of U.S. obligations under a bilateral commercial agreement between the United States and the country involved. Sections 404 and 405 of the Trade Act authorized the President to conclude such agreements, which must contain various provisions as prescribed by the statute concerning safeguards against disruptive imports, intellectual property rights, trade promotion, and consultations. Agreements and implementing proclamations can take effect only if Congress adopts a concurrent resolution under the expedited procedures of section 151 of the Trade Act. Agreements may remain in force for no more than 3 years, renewable for additional 3-year periods (without any Congressional approval) if past operation has been found satisfactory.

Presidential waiver authority of the emigration provisions has been extended annually since 1976. The waiver authority and the authority to conclude bilateral trade agreements and grant MFN status has, thus far, been used in three instances, following Congressional approval by concurrent resolution. MFN treatment has been extended to Romania effective August 3, 1975; to Hungary effective July 7, 1978; and to the People's Republic of China effective February 1, 1980. All three underlying bilateral agreements were extended, when appropriate, for additional 3-year periods by Presidential determinations of their satisfactory operation.

In 1988, the President did not exercise the annual waiver authority with respect to Romania, in response to the decision by the Government of Romania to renounce the renewal of MFN subject to the terms of Jackson-Vanik. Romania's MFN status and its eligibility for U.S. Government-supported export credits expired on July 3, 1988.

[24a] The constitutionality of this veto provision, however, is questionable in light of the decision of the U.S. Supreme Court on June 23, 1983, striking down a legislative veto in *Immigration and Naturalization Service* v. *Chadha*.

Poland is exempt from denial of MFN under Title IV of the Trade Act, but its unconditional MFN status was suspended by Presidential proclamation effective November 1, 1982, under the authority of section 125(d) of the Trade Act. On February 23, 1987, President Reagan restored MFN status to Poland by Presidential proclamation as part of the last stage of removing sanctions imposed on Poland in 1982 in response to its action against Solidarity. MFN status for Afghanistan was suspended by Presidential proclamation effective February 14, 1986, under the authority provided by section 118 of the Continuing Appropriations Act for fiscal year 1986.[25]

United States-Israel Free Trade Area

Title IV of the Trade and Tariff Act of 1984 [26] amended section 102(b) of the Trade Act of 1974 to authorize the President to enter into a bilateral reciprocal trade agreement with Israel specifically providing for elimination or reduction of U.S. duties on products of that country as well as nontariff barriers, subject to Congressional consultations and approval of implementing legislation under the expedited procecures of sections 102 and 151–154 of the Trade Act. As amended by section 401, the requirements for advance consultations and 90-day advance notice to Congress of intent to enter into a trade agreement did not apply to a bilateral agreement with Israel. Title IV also contains basic provisions of U.S. laws required to be applied to the administration of the agreement.

On November 29, 1983, President Reagan and Israeli Prime Minister Shamir agreed to proceed with bilateral negotiations on a United States-Israel free trade area, which the Israeli Government originally proposed in 1981. Negotiations by the U.S. Trade Representative began in mid-January 1984 on the elements of an agreement to eliminate tariffs and other trade-distorting practices between the two countries. The Agreement on the Establishment of a Free Trade Area Between the Government of the United States of America and the Government of Israel was signed on April 22, 1985. The President transmitted to the Congress on April 29 the text of the Agreement, a draft implementing bill, a statement of administrative action, and an explanation of the effects on existing law. The United States-Israel Free Trade Area Implementation Act of 1985 [27] approved the free trade area agreement with changes in U.S. laws necessary and appropriate for its domestic implementation. The implementing bill was passed by both Houses of Congress in May and signed into law on June 11, 1985.

TITLE IV OF THE TRADE AND TARIFF ACT OF 1984

In addition to providing the basic authority for a bilateral free trade area agreement with Israel, Title IV of the Trade and Tariff Act of 1984 set forth in advance the rule-of-origin requirements that would have to apply to such an agreement as well as the application of import relief laws.

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[25] Public Law 99-190, approved December 19, 1985.

[26] Public Law 98-573, Title IV, approved October 30, 1984.

[27] Public Law 99-47, approved June 11, 1985, 19 U.S.C. 2112.

Section 402 required that any trade agreement entered into under section 102(b) with Israel provide for the reduction or elimination of duties only on articles that meet rule-of-origin requirements similar to those under the Caribbean Basin Initiative (CBI):

> 1. The article must be the growth, product or manufacture of Israel or foreign materials or components must be substantially transformed into a new or different article grown, produced, or manufactured in Israel. Related provisions are designed to prevent qualification of minor pass-through operations and transshipments;
> 2. The article must be imported directly from Israel into the U.S. customs territory; and
> 3. At least 35 percent of the total value of the article must consist of materials produced in Israel plus direct cost of processing operations performed in Israel, of which 15 percent may be U.S. content.

Sections 403 and 406 of the 1984 Act make clear that existing trade laws available to domestic industries for relief from injurious import competition or unfair trade practices continue to apply to imports under the trade agreement with Israel. As under the CBI legislation, the President may suspend the reduction or elimination of any duty under the trade agreement with Israel and proclaim a duty as import relief under section 203 of the Trade Act of 1974 or as a national security measure under section 232 of the Trade Expansion Act of 1962. Alternatively the President may establish a margin of preference or maintain the duty reduction or elimination on Israeli articles while imposing relief on imports from other sources. The International Trade Commission must state in its report to the President on import relief investigations involving Israeli articles covered in a trade agreement whether and to what extent its injury findings and recommended relief apply to imports from Israel.

Section 404 of the Trade and Tariff Act of 1984 applies a special procedure similar to that established under the CBI whereby petitions may be filed with the Secretary of Agriculture for emergency relief on perishable products from Israel pending action on a petition filed for normal import relief action. The Secretary must determine and report to the President within 14 days a recommendation for emergency action if he has reason to believe an agricultural perishable product from Israel is being imported in such increased quantities as to be a substantial cause or threat of serious injury to the U.S. industry. The President must determine within 7 days whether to take emergency action, which consists of withdrawing the reduction or elimination of duty and restoring the original rate pending final action on the import relief petition.

UNITED STATES-ISRAEL FREE TRADE AREA AGREEMENT

The free trade area with Israel was the first such arrangement negotiated by the United States with any foreign country aside from the bilateral free trade arrangement with Canada in the automotive sector only. Unlike the unilateral Caribbean Basin Initiative (see description in chapter 1, supra), the United States-Israel arrangement is a reciprocal free trade area. The Agreement is an adjunct to existing multilateral obligations of both parties under the GATT; existing rights and obligations between the countries under the GATT or other agreements continue to apply unless specifically modified by the terms of the Agreement.

The main element of the Agreement is the reciprocal elimination of tariffs on all products traded between the two countries by January 1, 1995 and the elimination of other restrictive regulations of commerce on bilateral trade as provided under Article XXIV of the GATT for free trade areas. Duties are being eliminated by both countries over 10 years in four staging categories depending on the relative import sensitivity of articles for domestic producers. Duties on certain products were eliminated immediately as of September 1, 1985.

The Agreement also prohibits the introduction of new duties or quantitative restrictions in bilateral trade unless they are permitted by the Agreement or by the GATT. The Government of Israel undertook specific commitments concerning the reduction and elimination of its export subsidy programs and limited its GATT right as a developing country to apply duties to protect infant industries. Both parties must review their veterinary and plant health rules to insure nondiscrimination and not undue trade obstruction, undertook limitations on the duration of temporary restrictions that might be imposed in serious balance-of-payments situations, and reaffirmed existing bilateral obligations on intellectual property rights. The Agreement prohibits the imposition of import licensing requirements except in certain circumstances and of export or domestic purchase performance requirements on investment. The Agreement requires both countries to waive their Buy National restrictions on government procurement contracts valued $50,000 or more for articles or services covered by the GATT Agreement on Government Procurement.

The Agreement contains various safeguard provisions consistent with Title IV of the Trade and Tariff Act of 1984 to permit import relief measures under certain circumstances, and rule-of-origin requirements to ensure that free trade area benefits accrue only to the two parties. Import restrictions other than customs duties may also be maintained based on agricultural policy considerations. A Joint Committee reviews and administers the Agreement and provides for dispute settlement.

UNITED STATES-ISRAEL FREE TRADE AREA IMPLEMENTATION ACT OF 1985

The United States-Israel Free Trade Area Implementation Act of 1985 approved the United States-Israel Free Trade Area Agreement and statement of administrative action submitted to the Congress on April 29, 1985 and made necessary and appropriate changes in U.S. laws for its domestic implementation. U.S. statutes prevail if a provision of the Agreement is in conflict. No private rights of action or remedies are created. Expedited legislative approval procedures apply to subsequent changes in U.S. statutes to implement requirements, amendments, or recommendations under the Agreement.

The President is authorized to proclaim the modifications or continuance of existing duties or duty-free treatment to implement the schedule for U.S. duty elimination under the Agreement. Duties on certain import-sensitive articles remain unchanged until their elimination on January 1, 1995 unless Congress passes authorizing legislation under expedited procedures for gradual phaseout beginning after December 31, 1989 and elimination does not occur prior to January 1, 1995. The President may withdraw, suspend, or modify any duty or duty-free treatment or proclaim additional duties necessary to maintain the general level of concessions under the agreement.

The implementing legislation also amended Title III of the Trade Agreements Act of 1979 to lower the threshold contract value to $50,000 or more on which the President may waive Buy American restrictions on eligible products or services from Israel covered by the GATT Agreement on Government Procurement.

United States-Canada Free-Trade Agreement

Section 102(b) of the Trade Act of 1974, as amended by section 401 of the Trade and Tariff Act of 1984, authorized the President to enter into bilateral reciprocal trade agreements with foreign countries to eliminate or reduce tariffs on bilateral trade as well as nontariff barriers if the following procedural requirements were met:

(1) The foreign country requested the negotiation of a bilateral trade agreement;

(2) The President gave at least 60 days advance notice of negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consulted with these committees regarding negotiation of such an agreement; and

(3) Neither Committee disapproved of the negotiation of such an agreement before the end of that 60-day period.

Agreements entered into under this authority were subject to further Congressional consultation requirements and approval of implementing legislation under the expedited procedures of sections 102 and 151–154 of the Trade Act. This bilateral trade agreement authority expired on January 3, 1988.

In March 1985, President Reagan and Prime Minister Mulroney directed their respective trade officials to explore ways to liberalize between the two countries. On September 26, Canadian Prime Minister Mulroney proposed bilateral trade negotiations on the "broadest possible package of mutually beneficial reductions in barriers to trade in goods and services." On December 10, President Reagan notified the House Committee on Ways and Means and the Senate Committee on Finance of the Administration's desire to enter into bilateral trade negotiations with Canada under the section 102 authority. On October 3, 1987, President Reagan submitted the 90-day advance notice to the Congress of his intention to enter into a trade agreement with Canada on January 2, 1988, the day before expiration of the authority, "contingent upon successful completion of the negotiations." On January 2, 1988, President Reagan and

Prime Minister Mulroney signed the United States-Canada Free-Trade Agreement on behalf of their respective governments.

On July 25, 1988, the President transmitted to the Congress a copy of the Agreement, a statement of administrative action, proposed implementing legislation, and a statement of how the Agreement serves the interests of U.S. commerce. The implementing legislation passed the House on August 9 and the Senate on September 19, and was signed into law by the President on September 28, 1988. The Agreement entered into force on January 1, 1989.

UNITED STATES-CANADA FREE-TRADE AGREEMENT

The United States-Canada Free-Trade Agreement is one of the most comprehensive bilateral trade agreements ever negotiated and creates one of the world's largest internal markets for goods and services. It is the only bilateral reciprocal free trade area agreement other than the agreement with Israel in 1985 to which the United States is a party. The two federal governments agreed to ensure that state, provincial, and local governments take necessary actions in areas under their jurisdiction to implement the Agreement. Each party agreed to accord national interest treatment to the goods, services, and investment of the other party to the extent provided in the Agreement.

The central provision of the Agreement is the phased out elimination of tariffs on all goods traded between the two countries within 10 years, by January 1, 1998, in three staging categories. Tariff elimination on particular products can be implemented faster than scheduled by mutual agreement. The Agreement contains rules of origin based primarily on changes in tariff classifications to determine that only products with sufficient content originating in either or both countries receive the benefits of preferential tariff treatment. Customs user fees and duty drawback programs must be phased out by 1994 for bilateral trade; duty waivers linked to performance requirements, except certain waivers affecting automotive trade, and duty remission programs for autos must be terminated by 1988.

The Agreement eliminates and prohibits import and export quotas or other restrictions, unless specifically permitted by the Agreement or by the GATT, and liberalizes or harmonizes laws and regulations relating to technical standards. Other Agreement provisions liberalize barriers affecting agriculture, automotive products, wine and distilled spirits, energy, government procurement, services, investment, temporary entry for business persons, and financial services. Certain "cultural industries" are exempt from the Agreement. Temporary import relief actions may be taken on a bilateral or global basis under certain circumstances to safeguard domestic industries from import-related injury.

Institutional provisions are included for the avoidance or settlement of disputes between the two parties concerning the interpretation or application of the Agreement. A major element of the Agreement is establishment of a mechanism for review by binational panels and extraordinary challenge committees of final antidumping and countervailing duty determinations on products of the two countries in lieu of judicial review by courts of either party using the request of either party.

UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

The United States-Canada Free-Trade Agreement Implementation Act of 1988 [28] approved the Agreement and statement of administrative action submitted to the Congress on July 25, 1988 and sets forth the relationship between obligations under the Agreement and U.S. laws. The legislation also makes changes in U.S. laws necessary or appropriate to implement obligations under the Agreement, sets forth negotiating objectives and authorities for further U.S.-Canada trade liberalization, and specifies procedures for domestic implementation of future changes in the Agreement.

U.S. laws prevail over the Agreement if there is a conflict; the Agreement prevails over any conflicting State or local law. No person other than the United States has a cause of action or defense under the Agreement. Changes in U.S. law necessary or appropriate to implement an amendment to the Agreement may be approved under the "fast track" Congressional procedures during the 30-month period after the Agreement enters into force. Certain actions may be implemented by Presidential proclamation subject to prior consultation and 60 calendar day Congressional layover requirements.

The President is authorized to proclaim the modifications in U.S. rates of duty necessary to implement the scheduled phaseout and elimination of all tariffs on trade with Canada within 10 years. The rules of origin set forth in the Agreement to ensure application of preferential tariff treatment only to goods originating in Canada are enacted in the statute. The legislation implements U.S. obligations under the Agreement to phase out customs user fees on Canadian goods, to eliminate drawback with certain exceptions, and to exempt Canada from the lottery ticket embargo; provides penalties and recordkeeping requirements to enforce the rules of origin; and includes a reporting and monitoring requirement on the consistency of Canadian production-based duty remission programs with the GATT and the Agreement.

The legislation also implements in U.S. domestic law various provisions of the Agreement concerning particular economic sectors, including agricultural products (authority to impose temporary duties on imports of fresh fruits and vegetables, exemption of Canadian meat from any import limitations under the Meat Import Act, authority to exempt grain and grain products and sugar-containing products from Canada from section 22 import quotas); exports to Canada of Alaskan oil; exemption of Canadian uranium from U.S. enrichment restrictions; a lower contract threshold ($25,000) for exemption from Buy American restrictions on government procurement of articles from Canada covered by the GATT Agreement on Government Procurement; temporary entry of business persons; and extension of financial services. The legislation also includes procedures and criteria for the application of bilateral or global safeguard measures on Canadian articles as temporary relief from import-related injury.

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[28] Public Law 100-449, approved September 28, 1988, 19 U.S.C. 2112 note.

The implementing legislation sets forth various U.S. negotiating objectives to expand the Agreement with respect to services, investment, intellectual property rights, automotive products, procurement, Canadian agricultural transportation subsidies, potato trade and enforcement of U.S. rights against Canadian controls on fish. Objectives and authority to negotiate an agreement on subsidies and special procedures for industries facing subsidized competition pending development of subsidy rules are also included.

The legislation also contains revisions to U.S. law to implement the institutional provisions of the Agreement establishing binational panel and extraordinary challenge committee review, upon request, of final antidumping and countervailing duty determinations, in lieu of judicial review. The statute includes procedures and criteria for the selection of the panelists appointed by the United States, establishes the U.S. Secretariat, and authorizes appropriations for administrative expenses.

Chapter 7: ORGANIZATION OF TRADE POLICY FUNCTIONS

Congress

The role of the Congress in trade derives from its powers under the Constitution to regulate foreign commerce and to lay and collect duties (see Introduction). Consequently, the trade agreements program and application of duties or other import restrictions are based upon and limited to specific legislation or authorities delegated by the Congress. In order to ensure proper implementation of these laws and authorities, in accordance with legislative intent, Congress has included various statutory requirements in the trade laws to limit their application, to ensure Congressional oversight of their implementation, and to fulfill its responsibility for legislating any necessary or appropriate changes in U.S. laws.

More specifically, for example, periodic delegations of authority by the Congress to the President to proclaim changes in U.S. tariff treatment in the context of trade agreements has been limited in scope and periods of time, and use of the authority subject to certain prenegotiation procedures to protect domestic interests. On the other hand, Congress has granted Federal agencies permanent authorities to administer certain laws and programs, such as trade remedy laws or trade adjustment assistance, under certain specific guidelines and subject to Congressional oversight, including appropriations.

Specific statutory roles of the Congress became formalized under the Trade Act of 1974 [1] with the grant of authority to the President under section 102 to enter into trade agreements affecting U.S. laws other than traditional changes in tariff treatment. In authorizing implementation through an expedited, no amendment procedure, Congress ensured its role through statutory consultation and notification procedures prior to submission of a draft implementing bill by the Executive.

Section 161 of the Trade Act provides for appointment at the beginning of each session of Congress of five official Congressional advisers by the Speaker of the House from the Committee on Ways and Means and five official advisers by the President of the Senate from the Committee on Finance, and additional advisers where appropriate for specific policy matters or negotiations, to U.S. delegations to international negotiating sessions on trade agreements. The U.S. Trade Representative must keep each adviser and designated committee staff members informed of U.S. objectives and the status of negotiations and of any changes which may be recommended in U.S. laws. Section 162 requires transmission of any trade agreements to the Congress.

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[1] Public Law 93-618, 19 U.S.C. 2101.

Section 163 requires annual reports from the President and from the International Trade Commission (ITC) to keep the Congress informed regarding actions taken under the various trade laws and programs. Additional reports are required on specific aspects of various authorities (e.g., from the ITC on the domestic economic impact of the Carribbean Basin Initiative).

Finally, Congress had maintained its institutional role with the Executive by requiring the USTR to advise the Congress as well as the President on trade policy developments, through requests to the ITC for studies and analyses under section 332 of the Tariff Act of 1930 of various current trade issues, and through its power to authorize and appropriate funds for the functions of major trade agencies.

Executive Branch

INTERAGENCY TRADE PROCESS

Trade policy is a major element of U.S. economic and foreign policy. A decision to raise or lower tariffs, to impose import quotas, or to take other trade policy actions affects both domestic and foreign interests. In light of the far-reaching effects of trade policy decisions, a large number of U.S. Government agencies have a role to play in the development of policy. Various interagency coordinating mechanisms have been used for bringing together conflicting views and interests and resolving them so that there can be a consistent and balanced national trade policy.

Until the late 1950's, the Department of State was the major initiator and coordinator of international trade policy. The Secretary of State chaired the interagency Trade Agreements Committee which originally included eight agencies: the Departments of State, Agriculture, Commerce, and Treasury, the Tariff Commission, the Agricultural Adjustment Administration, the National Recovery Administration, and the Office of the Special Advisor to the President on Foreign Trade.

Congress authorized the President under section 242 of the Trade Expansion Act of 1962 [2] to establish a new interagency trade organization to carry out specified trade policy functions. The Trade Agreements Committee was replaced by the Trade Policy Committee (TPC) in 1975.[3] The TPC performs the same functions authorized by section 242 of the 1962 Trade Act. Two subordinate coordinating groups, the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), were subsequently created by the authority of the Special Representative.[4]

Section 1621 of the Omnibus Trade and Competitiveness Act of 1988 [5] amended section 242 of the 1962 Act to provide that this interagency organization will include the USTR as chair, the Secretaries of Commerce, State, Treasury, Agriculture, and Labor, and authorizes the USTR to invite other agencies to attend meetings as appropriate. The functions of the organization are: to assist and make recommendations to the President in carrying out his functions under the trade laws and to advise the USTR in carrying out his functions; to assist the President and advise the USTR on the development and implementation of U.S. international trade policy objectives; and to advise the President and the USTR on the relationship between U.S. international trade policy objectives and other major policy areas.

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[2] 19 U.S.C. 1801.

[3] Exec. Order 11846, March 27, 1975 40 Fed. Reg. 14291.

[4] 40 Fed. Reg. 18419, April 28, 1975.

[5] Public Law 100-418, approved August 23, 1988, section 1621.

The TPSC is the working level interagency group, with members drawn from the office-director level of member agencies. Over 30 subcommittees and task forces support the work of the TPSC. In the absence of consensus at the TPSC level or in the case of particularly significant policy matters, issues are referred to the Assistant Secretary-level TPRG. Disagreements at the Assistant Secretary-level are referred to the TPC for Cabinet-level review. When Presidential trade policy decisions are needed, the Chairman (USTR) submits the recommendations and advice of the Committee to the President.[6]

The Reagan administration created administratively additional interagency mechanisms to coordinate trade and, more generally, international economic policy and domestic policy issues. On April 11, 1985, President Reagan announced the creation of two Cabinet-level bodies—the Economic Policy Council (EPC) and the Domestic Policy Council—replacing the seven preexisting Cabinet Councils and the Senior Interagency Group—International Economic Policy. President Bush has retained these coordinating mechanisms. The President chairs both Councils.

The function of the EPC is to advise the President on all aspects of national and international economic policy, and to oversee the coordination and implementation of the Administration's economic policies.

The EPC is composed of the Secretaries of State, Treasury, Agriculture, Commerce, and Labor, the Director of the Office of Management and Budget, the USTR, and the Chairman of the Council of Economic Advisors. The heads of the national security departments and agencies and the Assistant to the President for National Security Affairs participate in Council meetings whenever international policy or budget matters are discussed. The heads of nonmember departments and agencies are invited to participate whenever matters affecting their organizations are on the agenda. The Vice President and White House Chief of Staff serve as ex-officio members. The Secretary of the Treasury serves as Chairman Pro-Tempore.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Section 241 of the Trade Expansion Act of 1962 established the Office of the Special Representative for Trade Negotiations.[7] Congress' stated purpose for creating the position was to provide better balance between competing domestic and international interests in the formulation of U.S. trade policy and negotiations. The Special Trade Representative (STR), whose rank was ambassador extraordinary and plenipotentiary, was to serve as the chief U.S. representative for negotiations conducted under authority of the Act and for other trade negotiations authorized by the President.

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[6] The Senate Report on Reorganization Plan No. 3 stated that "the USTR has the authority to take decisions even in the absence of consensus or compromise among agencies, and to enforce his decisions on other agencies. subject of course to the ultimate decision-making role of the President." Senate Report 96-402, at p. 15.

[7] Public Law 87-794, approved October 11, 1962, 19 U.S.C. 1801.

[8] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2171.

Various Executive orders issued by President Kennedy in 1963 established an Office of the Special Trade Representative and provided for the appointment of two Deputy Special Representatives for Trade Negotiations. These deputies, one based in Washington, D.C., and the other in Geneva, Switzerland (headquarters of the GATT Secretariat), were assigned major responsibilities for the conduct of the 1963-67 multilateral trade negotiations under the GATT, commonly known as the Kennedy Round.

Section 141 of the Trade Act of 1974 [8] called for establishment of the office as an agency within the Executive Office of the President and expanded STR's duties to include responsibility for the trade agreements program under the Tariff Act of 1930, the Trade Expansion Act of 1962 and the Trade Act of 1974. Other duties and responsibilities also were assigned by the 1974 Trade Act and by Executive Order 11846 of March 27, 1975, as amended. The position of STR was raised to Cabinet level with the rank of ambassador; the STR was made directly responsible to the President and Congress.

Reorganization Plan No. 3 of 1979, implemented by Executive Order 12188 of January 4, 1980,[9] authorized certain changes in the trade responsibilities of the STR. Plan No. 3 redesignated the Office of the Special Representative for Trade Negotiations as the Office of the United States Trade Representative (USTR). The new name reflected the plan's intent for the Trade Representative to have overall responsibility, on a permanent basis, for developing and coordinating the implementation of U.S. trade policy.

The 1979 Reorganization Plan specified that the USTR is the President's principal adviser and chief spokesman on trade, including advice on the impact of international trade on other U.S. Government policies. The USTR also became Vice Chairman of the Overseas Private Investment Corporation (OPIC), a nonvoting member of the Export-Import Bank, and a member of the National Advisory Committee on International Monetary and Financial Policies. In addition to these responsibilities, section 306(c) of the Trade and Tariff Act of 1984 [10] specified that the USTR, through the interagency organization, is responsible for developing and coordinating U.S. policies on trade in services.

Section 1601 of the Omnibus Trade and Competitiveness Act of 1988 [11] amended section 141 of the 1974 Act to the responsibilities of the USTR first enumerated under Reorganization Plan No. 3 and other statutes, as the following:

(1) to have primary responsibility for developing and coordinating the implementation of U.S. international trade policy;

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[8] Public Law 93-618, approved January 3, 1975, 19 U.S.C. 2171.
[9] 44 Fed. Reg. 69273.
[10] Public Law 98-573, approved October 30, 1984.
[11] Public Law 100-418, section 1601, approved August 23, 1988.

(2) to serve as the principal adviser to the President on international trade policy and advise the President on the impact of other U.S. Government policies on international trade;

(3) to have lead responsibility for the conduct of, and be chief U.S. representative for, international trade negotiations, including commodity and direct investment negotiations;

(4) to coordinate trade policy with other agencies;

(5) to act as the principal international trade spokesman of the President;

(6) to report to the President and the Congress on, and be responsible to the President and the Congress for, the administration of the trade agreements program, including advising on nontariff barriers, international commodity agreements, and other matters relating to the trade agreements program; and

(7) to be chairman of the Trade Policy Committee.

In addition, the Omnibus Trade and Competitiveness Act also included the sense of Congress that the USTR be the senior representative on any body the President establishes to advise him on overall economic policies in which international trade matters predominate and that the USTR be included in all economic summits and other international meetings at which international trade is a major topic. The USTR was made responsible for identifying and coordinating agency resources on unfair trade practices cases that may be actionable under U.S. antidumping and countervailing duty statutes, section 337, or section 301. The Act established an unfair trade practices committee to advise the USTR.

Under the Omnibus Trade and Competitiveness Act of 1988, the Congress further sought to elevate the importance of the USTR in trade matters by shifting to the USTR from the President responsibility for implementing actions under section 301 of that Act, subject to the specific direction, if any, of the President.

DEPARTMENT OF AGRICULTURE

The U.S. Department of Agriculture (USDA) was created by Act of Congress on May 15, 1862, and was administered by a Commissioner of Agriculture until 1889,[12] when the Department's responsibilities were expanded. At that time, the position of Commissioner was elevated to the rank of Secretary. Among the overall purposes of the Department are the improvement and maintenance of farm income and the expansion of foreign markets for U.S. agriculture products.

USDA is actively involved in U.S. trade policy formulation, to ensure that decisions in that area take into account their impact on U.S. agricultural interests. USDA also has direct responsibility for a variety of trade-related functions. Section 22 of the Agricultural Adjustment Act [13] charges the Secretary of Agriculture with advising the President on the effect of imports on USDA programs. Enforcement and administration of certain elements of cheese quotas and meat imports fall to the Secretary. The Trade Agreements Act of 1979 gives the Department responsibility for coordinating negotiations with foreign governments on standards-related matters in agricultural trade and for monitoring activities in that area.[14] The Agricultural Trade Act of 1978 [15] authorized USDA to establish up to 25 Agricultural Trade Offices to assist U.S. exporters, trade groups, and state export marketing officials in their trade promotion efforts.

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[12] 12 Stat. 387, 5 U.S.C. 511, 514, 516.

[13] 7 U.S.C. 624 (see discussion of section 22 in chapter 3, supra).

Most of USDA's international trade functions are administered by the Foreign Agricultural Service. (FAS), which is supported by a network of agricultural attachés at many U.S. embassies, and analysts, marketing specialists, and negotiators based in the United States. FAS personnel supply and analyze data on foreign agricultural markets; operate a market development program, work to reduce foreign barriers to U.S. farm goods, and manage the Public Law 480 program and the Commodity Credit Corporation (CCC) Export Credit Sales Program.

The Department of Agriculture is a voting member of the Trade Policy Committee and of its subordinate committees.

DEPARTMENT OF COMMERCE

The Department of Commerce was established in 1903 as the Department of Commerce and Labor.[16] A 1913 act of Congress split the Department of Commerce and Labor into two separate departments.[17] The mandate of the Commerce Department originally was to promote the foreign and domestic commerce of the United States. In subsequent years, its authority was extended to other areas bearing on the economic and technological development of the country. The titles of the component units of the Department indicate the diversity of the agency's current programs and services: Bureau of the Census; Bureau of Economic Analysis; Economic Development Administration; Bureau of Export Administration; International Trade Administration; Minority Business Development Agency; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration; Patent and Trademark Office; and United States Travel and Tourism Administration.

While most of the these agencies have some responsibilities that affect U.S. trade, the U.S. Department of Commerce's major trade responsibilities are centered in the International Trade Administration and the Bureau of Export Administration.

The International Trade Administration (ITA), which was established by the Secretary of Commerce on January 2, 1980,[18] administers many of the Department's international trade responsibilities and activities as prescribed by Reorganization Plan No. 3 of 1979. The plan provides that the Commerce Department has "general operational responsibility for major nonagricultural international trade functions," as well as for any other functions assigned by law. Those include export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms, research and analysis, and compliance with international trade agreements to which the United States is a party.

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[14] 19 U.S.C. 2542.

[15] Public Law 95-501, title IV, section 401(l), approved October 21, 1978, 92 Stat. 1688, 7 U.S.C. 1765a.

[16] 32 Stat. 827, 5 U.S.C. 591.

[17] 37 Stat. 736, 15 U.S.C. 1501.

[18] 45 Fed. Reg. 11862, as amended by 46 Fed. Reg. 13537.

To foster U.S. exports, ITA maintains a wide range of informational and promotional programs. Some of the major informational programs are designed to match U.S. producers with overseas buyers and to provide them with accurate foreign market intelligence about export opportunities. In addition, ITA assists U.S. firms participating in international trade fairs. ITA also has responsibility for promoting the formation of export trading companies and, with the concurrence of the Justice Department, certifying that export trading company petitions meet the required antitrust standards.

The U.S. and Foreign Commercial Service (US&FCS), first established in 1980 but codified under the Omnibus Trade and Competitiveness Act of 1988,[19] carries out the major trade promotion functions of the Department of Commerce in the International Trade Administration. Through 48 district offices and 19 branch offices located throughout the United States and Puerto Rico and through 126 foreign posts located in 66 countries, the US&FCS provides counseling and marketing assistance to U.S. exporters. In addition, US&FCS maintains a wide range of information and export promotion programs. Some of these programs are designed to match U.S. producers with overseas buyers and to provide exporters with information on overseas market opportunities.

The Bureau of Export Administration (BXA) controls exports of commodities and technology for reasons of national security, foreign policy, and short supply. BXA issues export licenses in accordance with the export control regulations. Export control regulations are developed in consultation with other agencies, and some export license applications require interagency review.

The Omnibus Trade and Competitiveness Act of 1988 [20] requires the Secretary of Commerce to create, by 1990, a National Trade Data Bank. Before creating the bank, the Secretary will obtain advice from a newly created "Interagency Trade Data Advisory Committee." The data bank will contain international economic data collected from various executive agencies that is useful in international economic analysis and export promotion data to be used by U.S. businesses and by State and Federal agencies that promote exports.

DEPARTMENT OF LABOR

The Department of Labor was established as the Department of Commerce and Labor in 1903 [21] and was split into a separate agencin in 1913.[22] The role of the Labor Department is to promote the overall welfare of U.S. wage earners.

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[19] Public Law 100-418, section 2301, approved August 23, 1988; 15 U.S.C. 4721.

[20] Sections 5401-5413.

[21] 32 Stat. 827, 5 U.S.C. 591.

The Deputy Under Secretary for International Labor Affairs, who heads the Bureau of International Labor Affairs, assists in the formulation of international economic and trade policies affecting U.S. workers. The Department is a voting member of the Trade Policy Committee and its subordinate committees. The Department conducts research on trade-related employment issues, helps represent the United States in international negotiations before the International Labor Organization and in other international organizations. The Bureau is assisted in its efforts by labor attachés posted at many U.S. embassies overseas.

The Labor Department, through the Employment and Training Administration, is responsible for administration of the Trade Adjustment Assistance (TAA) program for workers, under authority of the Trade Act of 1974. (See discussion of TAA program in chapter 2, supra.) Among the Department's TAA duties are certification of workers for eligibility to apply for benefits and issuance of guidelines for administration of benefits at the State level.

DEPARTMENT OF STATE

The Department of State, created by act of Congress in 1789, advises the President in the formulation and execution of foreign policy. The Department's primary objective is to promote the long-range security and well-being of the United States. In so doing, the Department plays a significant role in analyzing facts and making recommendations on policy and future actions on any issues that affect American interests overseas. In the formulation of U.S. trade policy, State's primary role is to provide a foreign policy perspective to interagency deliberations. State performs this task as a voting member of the Trade Policy Committee and its subordinate committees.

The Department attaches high priority to trade, investment, and commodity issues because of their importance in U.S. foreign relations. Within the Department, the Under Secretary for Economic and Agricultural Affairs is principal advisor to the Secretary and Deputy Secretary in the formulation and conduct of foreign economic policy. The Bureau of Economic and Business Affairs has overall responsibility within the Department for formulating and implementing policy regarding foreign economic matters, including policies on foreign investment, natural resources and food, international trade, and international finance and development. State plays a major role in the formulation of U.S. policy in these areas.

DEPARTMENT OF THE TREASURY AND THE U.S. CUSTOMS SERVICE

The Department of the Treasury was created by act of Congress in 1789.[23] The Treasury Department's role and responsibilities have been broadened substantially by many subsequent acts and executive orders.

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[22] 37 Stat. 736, 15 U.S.C. 1501.

[23] 1 Stat. 65, 31 U.S.C. 1001.

The Department of the Treasury has primary responsibility for formulation and administration of economic and financial policy; tax policy; public debt management; various law enforcement functions (through the U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; and the U.S. Customs Service); and the manufacture of coins and currency.

The Secretary serves as the principal economic advisor to the President. The Secretary serves as U.S. Governor of the International Monetary Fund, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund. The Secretary also is co-chairman of a number of bilateral economic commissions with other countries. As Chairman of the National Advisory Council on International Monetary and Financial Policies, the Secretary or his delegate plays a key role in formulating and overseeing U.S. policies toward international lending institutions and U.S. aid and trade finance policies.

The Treasury's international responsibilities are carried out by the Assistant Secretary for International Affairs, who advises and assists the Secretary and the Deputy Secretary. The Office of the Assistant Secretary is divided into groups responsible for international monetary affairs, developing nations, international trade and investment, and Arabian Peninsula Affairs. Supporting staff offices analyze economic and financial policies in industrial and developing countries and support Treasury's attachés abroad; coordinate U.S. policies toward the International Monetary Fund, the World Bank and other international financial institutions; monitor developments in foreign exchange markets and coordinate (with the Federal Reserve) U.S. intervention in exchange markets; collect and analyze U.S. balance of payments data and other economic and financial data affecting the U.S. and world economic outlook; coordinate policies toward financing of trade and toward foreign investment in the United States and U.S. overseas investment; and conduct other functions.

The Treasury Department maintains an active involvement in U.S. trade policy to ensure that decisions in that area include a consideration of their impact on the U.S. economy. Treasury is a voting member of the Trade Policy Committee chaired by the U.S. Trade Representative and of the TPC's subcabinet groups. Treasury also has responsibility for the U.S. Customs Service.

U.S. CUSTOMS SERVICE

The second act of Congress, dated July 4, 1789, authorized the collection of duties on imported goods, wares and merchandise. The fifth act of Congress, passed in July 31, 1789, established customs districts and authorized customs officers to collect import duties. On March 3, 1927, the Bureau of Customs was established as a separate agency under the Treasury Department.[24] The Bureau was redesignated the United States Customs Service on August 1, 1973.[25]

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[24] 44 Stat. 1381.

[25] Treasury Department Order 165-23, of April 4, 1973.

The Custom Service collects import duties and enforces more than 400 laws or regulations relating to international trade. Among the many responsibilities falling to Customs are assessing and collecting duties, excise taxes, penalties and other fees due on imported goods; interdicting and seizing illegally entered merchandise; processing persons, carriers, cargo and mail into and out of the United States; helping enforce U.S. laws against the transfer of certain technologies to Eastern European countries, laws on copyright, patent and trademark rights; and administering quotas and other import restrictions. The U.S. Customs Service maintains close ties with private business associations, international organizations, and foreign customs services.

U.S. International Trade Commission

The U.S. International Trade Commission (USITC) is an independent and quasi-judicial agency that conducts studies, reports, and investigations, and makes recommendations to the President and the Congress on a wide range of international trade issues. The agency was established on September 8, 1916 [26] as the U.S. Tariff Commission. In 1974 the name was changed to the United States International Trade Commission by section 171 of the Trade Act of 1974.[27]

Commissioners appointed after January 9, 1975, are appointed by the President for nine-year terms, unless they are appointed to fill an unexpired term. They may not be reappointed. The Chairman and Vice Chairman are designated by the President for two-year terms, and successive Chairmen may not be of the same political party. Of the six commissioners, not more than three may be of the same political party.

The Commission has numerous responsibilities for advice, investigations, studies, and data collection and analysis which may be grouped into the following general areas: advice on trade negotiations; Generalized System of Preferences; import relief for domestic industries; East-West trade; investigations of injury caused by subsidized or dumped goods; import interference with agricultural programs; unfair practices in import trade; development of uniform statistical data; matters related to the U.S. tariff schedules; international trade studies; trade and tariff summaries.

Statutory authority for the Commission's responsibilities is provided primarily by the Tariff Act of 1930, the Agricultural Adjustment Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Trade Agreements Act of 1979, the Trade and Tariff Act of 1984, and the Omnibus Trade and Competitiveness Act of 1988.

The Tariff Act of 1930 gives the Commission broad authority to conduct studies and investigations relating to the impact of international trade on U.S. industries. Various sections under title VII of the Tariff Act authorize the Commission to determine whether U.S. industries are materially injured by imports which benefit from subsidies or are priced below fair value.[28] If the Secretary of

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[26] 39 Stat. 795.

[27] 19 U.S.C. 2231.

[28] Secs. 704, 734, and 751; 19 U.S.C. 1671c, 1673c, and 1675c.

Commerce decides to suspend an antidumping or countervailing duty investigation upon reaching an agreement to eliminate the injury caused by the subsidized or dumped imports, the Commission is authorized to study whether or not the injury in fact is being eliminated. Section 337 of the Tariff Act authorizes the ITC to investigate whether unfair methods of competition or unfair acts are being committed in the importation of goods into the United States.[29] The Commission is authorized to order actions to remedy any such violations, subject to Presidential disapproval.

Upon the request of the President, the House Committee on Ways and Means, the Senate Committee on Finance, or on its own motion, the ITC conducts studies and investigations under section 332 of the Tariff Act of 1930 on a wide range of trade-related issues.[30] Public reports generally are issued following such studies and investigations. The ITC also publishes summaries outlining the types of products entering the United States, their importance in U.S. consumption, production, and trade, and other relevant information. The ITC also is required to establish and maintain statistics on U.S. trade and to review the international commodity code for classifying products and reporting trade statistics among countries.[31]

The Trade Expansion Act of 1962 and the Trade Act of 1974 expanded the duties of the ITC. Both laws require the Commission to review developments within an industry receiving import protection and to advise the President on the probable impact of reducing or eliminating the protection.[32]

The Trade Act of 1974 gives the Commission a Presidential advisory role on the probable domestic economic effects of trade concessions proposed during trade negotiations.[33] The ITC performs a similar advisory role in relation to duty-free treatment under the Generalized System of Preferences.[34] Under section 201 of the 1974 Trade Act,[35] the Commission conducts investigations to determine whether increased imports are causing or threatening serious injury to the competing domestic industry and reports its findings and recommendations for relief to the President.

Sections 406 and 410 [36] of the 1974 Trade Act provide for ITC monitoring and investigation of various aspects of trade with nonmarket economics.

The Agricultural Adjustment Act [37] requires the ITC, upon the direction of the President, to investigate whether imports of agricultural products are interfering with programs of the Department of Agriculture and to present its findings and recommendations to the President.

Section 221 of the Trade and Tariff Act of 1984, amended by section 1614 of the Omnibus Trade and Competitiveness Act of 1988, established a separate Trade Remedy Assistance Office within the

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[29] 19 U.S.C. 1337.
[30] 19 U.S.C. 1332.
[31] 19 U.S.C. 1484(e).
[32] 19 U.S.C. 1981, 2253.
[33] 19 U.S.C. 2151.
[34] 19 U.S.C. 2151, 2163.
[35] 19 U.S.C. 2251.
[36] 19 U.S.C. 2240, 2436.
[37] 7 U.S.C. 624.

ITC to provide information to the public on remedies and benefits available under U.S. trade laws and on the procedures and filing dates for relief petitions.

Private Sector Advisory Committees

The first formal mechanism providing for ongoing advice from the private sector on international trade matters was authorized by the Trade Act of 1974.[38] In view of the positive contribution of the advisory committees to the Tokyo Round of Multilateral Trade Negotiations and to passage of the implementing legislation—the Trade Agreements Act of 1979—Congress provided for continuation of the advisory committee structure in section 1631 of the Omnibus Trade and Competitiveness Act of 1988. Congress also expanded the committees' responsibilities by authorizing them to provide advice on the priorities and direction of U.S. trade policy, in addition to their previous responsibilities.

The U.S. Trade Representative manages the advisory committees in cooperation with the Departments of Agriculture, Commerce, Labor, and other departments. The committee structure is three-tiered, with the most senior level represented by the Advisory Committee for Trade Policy and Negotiations (ACTPN). The ACTPN is a 45-member body composed of Presidential-appointed representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. The group provides overall guidance on trade policy matters, including trade agreements and negotiations, and is chaired by a chairman elected by the committee. The group convenes at the call of the U.S. Trade Representative.

The second tier is made up of policy advisory committees representing overall sectors of the economy (e.g., industry, agriculture, labor, services) whose role is to advise the government of the impact of various trade measures on their respective sectors.

The third tier is composed of sector advisory committees consisting of experts from various fields. Their role is to provide specific, technical information and advice on trade issues involving their particular sector. Members of the second and third tier are appointed by the U.S. Trade Representative and the Secretary of the relevant department or agency.

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[38] 19 U.S.C. 2155.

PART II: COMPILATION OF U.S. TRADE STATUTES

Chapter 8: TARIFFS AND CUSTOMS LAWS

A. IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

Title I, Part 3, Subtitle B of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 3001; P.L. 100-418, as amended by P.L. 100-647]

SEC. 1201. PURPOSES.

The purposes of this subtitle are—

(1) to approve the International Convention on the Harmonized Commodity Description and Coding System;

(2) to implement in United States law the nomenclature established internationally by the Convention; and

(3) to provide that the Convention shall be treated as a trade agreement obligation of the United States.

SEC. 1202. DEFINITIONS.

As used in this subtitle:

(1) The term "Commission" means the United States International Trade Commission.

(2) The term "Convention" means the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, submitted to the Congress on June 15, 1987.

(3) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) The term "Federal agency" means any establishment in the executive branch of the United States Government.

(5) The term "old Schedules" means title I of the Tariff Act of 1930 (19 U.S.C. 1202) as in effect on the day before the effective date of the amendment to such title under section 1204(a).

(6) The term "technical rectifications" means rectifications of an editorial character or minor technical or clerical changes which do not affect the substance or meaning of the text, such as—

(A) errors in spelling, numbering, or punctuation;

(B) errors in indentation;

(C) errors (including inadvertent omissions) in cross-references to headings or subheadings or notes; and

(D) other clerical or typographical errors.

SEC. 1203. CONGRESSIONAL APPROVAL OF UNITED STATES ACCESSION TO THE CONVENTION.

(a) CONGRESSIONAL APPROVAL.—The Congress approves the accession by the United States of America to the Convention.

(b) ACCEPTANCE OF THE FINAL LEGAL TEXT OF THE CONVENTION BY THE PRESIDENT.—The President may accept for the United States the final legal instruments embodying the Convention. The President shall submit a copy of each final instrument to the Congress on the date it becomes available.

(c) UNSPECIFIED PRIVATE REMEDIES NOT CREATED.—Neither the entry into force with respect to the United States of the Convention nor the enactment of this subtitle may be construed as creating any private right of action or remedy for which provision is not explicitly made under this subtitle or under other laws of the United States.

(d) TERMINATION.—The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) do not apply to the Convention.

SEC. 1204. ENACTMENT OF THE HARMONIZED TARIFF SCHEDULE.

(a) IN GENERAL.—The Tariff Act of 1930 is amended by striking out title I and inserting a new title I entitled "Title I—Harmonized Tariff Schedule of the United States" (hereinafter in this subtitle referred to as the "Harmonized Tariff Schedule") which—

(1) consists of—

(A) the General Notes;

(B) the General Rules of Interpretation;

(C) the Additional U.S. Rules of Interpretation;

(D) sections I to XXII, inclusive (encompassing chapters 1 to 99, and including all section and chapter notes, article provisions, and tariff and other treatment accorded thereto); and

(E) the Chemical Appendix to the Harmonized Tariff Schedule;

all conforming to the nomenclature of the Convention and as set forth in Publication No. 2030 of the Commission entitled "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes" and Supplement No. 1 thereto; but

(2) does not include the statistical annotations, notes, annexes, suffixes, check digits, units of quantity, and other matters formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), nor the table of contents, footnotes, index, and other matters inserted for ease of reference, that are included in such Publication No. 2030 or Supplement No. 1. thereto.

(b) MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE.—At the earliest practicable date after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, the President shall—

(1) proclaim such modifications to the Harmonized Tariff Schedule as are consistent with the standards applied in converting the old Schedules into the format of the Convention, as reflected in such Publication No. 2030 and Supplement No. 1. thereto, and as are necessary or appropriate to implement—

(A) the future outstanding staged rate reductions authorized by the Congress in—

(i) the Trade Act of 1974 (19 U.S.C. 2101 et seq.) and the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) to reflect the tariff reductions that resulted from the Tokyo Round of multilateral trade negotiations, and

(ii) the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 1202 note) to reflect the tariff reduction resulting from the United States-Israel Free Trade Area Agreement,

(B) the applicable provisions of—

(i) statutes enacted,

(ii) executive actions taken, and

(iii) final judicial decisions rendered,

after January 1, 1988, and before the effective date of the Harmonized Tariff Schedule, and

(C) such technical rectifications as the President considers necessary; and

(2) take such action as the President considers necessary to bring trade agreements to which the United States is a party into conformity with the Harmonized Tariff Schedule.

(c) STATUS OF THE HARMONIZED TARIFF SCHEDULE.—

(1) The following shall be considered to be statutory provisions of law for all purposes:

(A) The provisions of the Harmonized Tariff Schedule as enacted by this subtitle.

(B) Each statutory amendment to the Harmonized Tariff Schedule.

(C) Each modification or change made to the Harmonized Tariff Schedule by the President under authority of law (including section 604 of the Trade Act of 1974).

(2) Neither the enactment of this subtitle nor the subsequent enactment of any amendment to the Harmonized Tariff Schedule, unless such subsequent enactment otherwise provides, may be construed as limiting the authority of the President—

(A) to effect the import treatment necessary or appropriate to carry out, modify, withdraw, suspend, or terminate, in whole or in part, trade agreements; or

(B) to take such other actions through the modification, continuance, or imposition of any rate of duty or other import restriction as may be necessary or appropriate under the authority of the President.

(3) If a rate of duty established in column 1 by the President by proclamation or Executive order is higher than the existing rate of duty in column 2, the President may by proclamation or Executive order increase such existing rate to the higher rate.

(4) If a rate of duty is suspended or terminated by the President by proclamation or Executive order and the proclamation or Executive order does not specify the rate that is to apply in lieu of the suspended or terminated rate, the last rate of duty that applied prior to the suspended or terminated rate shall be the effective rate of duty.

(d) **Interim Informational Use of Harmonized Tariff Schedule Classifications.**—Each—

(1) proclamation issued by the President;

(2) public notice issued by the Commission or other Federal agency; and

(3) finding, determination, order, recommendation, or other decision made by the Commission or other Federal agency;

during the period between the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988 and the effective date of the Harmonized Tariff Schedule shall, if the proclamation, notice, or decision contains a reference to the tariff classification of any article, include, for informational purposes, a reference to the classification of that article under the Harmonized Tariff Schedule.

SEC. 1205. COMMISSION REVIEW OF, AND RECOMMENDATIONS REGARDING, THE HARMONIZED TARIFF SCHEDULE.

(a) **In General.**—The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, at such time as amendments to the Convention are recommended by the Customs Cooperation Council for adoption, and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary or appropriate—

(1) to conform the Harmonized Tariff Schedule with amendments made to the Convention;

(2) to promote the uniform application of the Convention and particularly the Annex thereto;

(3) to ensure that the Harmonized Tariff Schedule is kept up-to-date in light of changes in technology or in patterns of international trade;

(4) to alleviate unnecessary administrative burdens; and

(5) to make technical rectifications.

(b) **Agency and Public Views Regarding Recommendations.**—In formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies and the public. For purposes of obtaining public views, the Commission—

(1) shall give notice of the proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing; and

(2) may provide for a public hearing.

(c) **Submission of Recommendations.**—The Commission shall submit recommendations under this section to the President in the form of a report that shall include a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States. The report also shall include a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.

(d) **Requirements Regarding Recommendations.**—The Commission may not recommend any modification to the Harmonized Tariff Schedule unless the modification meets the following requirements:

(1) The modification must—

(A) be consistent with the Convention or any amendment thereto recommended for adoption;

(B) be consistent with sound nomenclature principles; and

(C) ensure substantial rate neutrality.

(2) Any change to a rate of duty must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section.

(3) The modification must not alter existing conditions of competition for the affected United States industry, labor, or trade.

SEC. 1206. PRESIDENTIAL ACTION ON COMMISSION RECOMMENDATIONS.

(a) In General.—The President may proclaim modifications, based on the recommendations by the Commission under section 1205, to the Harmonized Tariff Schedule if the President determines that the modifications—

(1) are in conformity with United States obligations under the Convention; and

(2) do not run counter to the national economic interest of the United States.

(b) Lay-Over Period.—

(1) The President may proclaim a modification under subsection (a) only after the expiration of the 60-day period beginning on the date on which the President submits a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the proposed modification and the reasons therefor.

(2) The 60-day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(c) Effective Date of Modifications.—Modifications proclaimed by the President under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 1207. PUBLICATION OF THE HARMONIZED TARIFF SCHEDULE.

(a) In General.—The Commission shall compile and publish, at appropriate intervals, and keep up to date the Harmonized Tariff Schedule and related information in the form of printed copy; and, if, in its judgment, such format would serve the public interest and convenience—

(1) in the form of microfilm images; or

(2) in the form of electronic media.

(b) Content.—Publications under subsection (a), in whatever format, shall contain—

(1) the then current Harmonized Tariff Schedule;

(2) statistical annotations and related statistical information formulated under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)); and

(3) such other matters as the Commission considers to be necessary or appropriate to carry out the purposes enumerated in the Preamble to the Convention.

SEC. 1208. IMPORT AND EXPORT STATISTICS.

The Secretary of Commerce shall compile, and make publicly available, the import and export trade statistics of the United States. Such statistics shall be conformed to the nomenclature of the Convention.

SEC. 1209. COORDINATION OF TRADE POLICY AND THE CONVENTION.

The United States Trade Representative is responsible for coordination of United States trade policy in relation to the Convention. Before formulating any United States position with respect to the Convention, including any proposed amendments thereto, the United States Trade Representative shall seek, and consider, information and advice from interested parties in the private sector (including a functional advisory committee) and from interested Federal agencies.

SEC. 1210. UNITED STATES PARTICIPATION ON THE CUSTOMS COOPERATION COUNCIL REGARDING THE CONVENTION.

(a) PRINCIPAL UNITED STATES AGENCIES.—

(1) Subject to the policy direction of the Office of the United States Trade Representative under section 1209, the Department of the Treasury, the Department of Commerce, and the Commission shall, with respect to the activities of the Customs Cooperation Council relating to the Convention—

(A) be primarily responsible for formulating United States Government positions on technical and procedural issues; and

(B) represent the United States Government.

(2) The Department of Agriculture and other interested Federal agencies shall provide to the Department of the Treasury, the Department of Commerce, and the Commission technical advice and assistance relating to the functions referred to in paragraph (1).

(b) DEVELOPMENT OF TECHNICAL PROPOSALS.—

(1) In connection with responsibilities arising from the implementation of the Convention and under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) regarding United States programs for the development of adequate and comparable statistical information on merchandise trade, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall prepare technical proposals that are appropriate or required to assure that the United States contribution to the development of the Convention recognizes the needs of the United States business community for a Convention which reflects sound principles of commodity identification, modern producing methods, and current trading patterns and practices.

(2) In carrying out this subsection, the Secretary of the Treasury, the Secretary of Commerce, and the Commission shall—

(A) solicit and consider the views of interested parties in the private sector (including a functional advisory committee) and of interested Federal agencies;

(B) establish procedures for reviewing, and developing appropriate responses to, inquiries and complaints from interested parties concerning articles produced in and exported from the United States; and

(C) where appropriate, establish procedures for—

(i) ensuring that the dispute settlement provisions and other relevant procedures available under the Convention are utilized to promote United States export interests, and

(ii) submitting classification questions to the Harmonized System Committee of the Customs Cooperation Council.

(c) AVAILABILITY OF CUSTOMS COOPERATION COUNCIL PUBLICATIONS.—As soon as practicable after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, and periodically thereafter as appropriate, the Commission shall see to the publication of—

(1) summary records of the Harmonized System Committee of the Customs Cooperation Council; and

(2) subject to applicable copyright laws, the Explanatory Notes, Classification Opinions, and other instruments of the Customs Cooperation Council relating to the Convention.

SEC. 1211. TRANSITION TO THE HARMONIZED TARIFF SCHEDULE.

(a) EXISTING EXECUTIVE ACTIONS.—

(1) The appropriate officers of the United States Government shall take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule all proclamations, regulations, rulings, notices, findings, determinations, orders, recommendations, and other written actions that—

(A) are in effect on the day before the effective date of the Harmonized Tariff Schedule; and

(B) contain references to the tariff classification of articles under the old Schedules.

(2) Neither the repeal of the old Schedules, nor the failure of any officer of the United States Government to make the conforming changes required under paragraph (1), shall affect to any extent the validity or effect of the proclamation, regulation, ruling, notice, finding, determination, order, recommendation, or other action referred to in paragraph (1).

(b) GENERALIZED SYSTEM OF PREFERENCES CONVERSION.—

(1) The review of the proposed conversion of the Generalized System of Preferences program to the Convention tariff nomenclature, initiated by the Office of the United States Trade Representative by notice published in the Federal Register on December 8, 1986 (at page 44,163 of volume 51 thereof), shall be treated as satisfying the requirements of sections 503(a) and 504(c)(3) of the Trade Act of 1974 (19 U.S.C. 2463(a), 2464(c)(3)).

(2) In applying section 504(c)(1) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)) for calendar year 1989, the reference in such

section to July 1 shall be treated as a reference to September 1.

(c) IMPORT RESTRICTIONS UNDER THE AGRICULTURAL ADJUSTMENT ACT.—

(1) Whenever the President determines that the conversion of an import restriction proclaimed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) from part 3 of the Appendix to the old Schedules to subchapter IV of chapter 99 of the Harmonized Tariff Schedule results in—

(A) an article that was previously subject to the restriction being excluded from the restriction; or

(B) an article not previously subject to the restriction being included within the restriction;

the President may proclaim changes in subchapter IV of chapter 99 of the Harmonized Tariff Schedule to conform that subchapter to the fullest extent possible to part 3 of the Appendix to the old Schedules.

(2) Whenever the President determines that the conversion from headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules to Additional U.S. Note 2, chapter 17, of the Harmonized Tariff Schedule results in—

(A) an article that was previously covered by such headnote being excluded from coverage; or

(B) an article not previously covered by such headnote being included in coverage;

the President may proclaim changes in Additional U.S. Note 2, chapter 17 of the Harmonized Tariff Schedule to conform that note to the fullest extent possible to headnote 2 of subpart A of part 10 of schedule 1 of the old Schedules.

(3) No change to the Harmonized Tariff Schedule may be proclaimed under paragraph (1) or (2) after June 30, 1990.

(d) CERTAIN PROTESTS AND PETITIONS UNDER THE CUSTOMS LAW.—

(1)(A) This subtitle may not be considered to divest the courts of jurisdiction over—

(i) any protest filed under section 514 of the Tariff Act of 1930 (19 U.S.C. 1514); or

(ii) any petition by an American manufacturer, producer, or wholesaler under section 516 of such Act (19 U.S.C. 1516);

covering articles entered before the effective date of the Harmonized Tariff Schedule.

(B) Nothing in this subtitle shall affect the jurisdiction of the courts with respect to articles entered after the effective date of the Harmonized Tariff Schedule.

(2)(A) If any protest or petition referred to in paragraph (1)(A) is sustained in whole or in part by a final judicial decision, the entries subject to that protest or petition and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with such final judicial decision under the old Schedules.

(B) At the earliest practicable date after the effective date of the Harmonized Tariff Schedule, the Commission shall initiate an investigation under section 332 of the Tariff Act of 1930 (19

U.S.C. 1332) of those final judicial decisions referred to in subparagraph (A) that—

(i) are published during the 2-year period beginning on February 1, 1988; and

(ii) would have affected tariff treatment if they had been published during the period of the conversion of the old Schedules into the format of the Convention.

No later than September 1, 1990, the Commission shall report the results of the investigation to the President, the Committee on Ways and Means, and the Committee on Finance, and shall recommend those changes to the Harmonized Tariff Schedule that the Commission would have recommended if the final decisions concerned had been made before the conversion into the format of the Convention occurred.

(3) The President shall review all changes recommended by the Commission under paragraph (2)(B) and shall, as soon as practicable, proclaim such of those changes, if any, which he decides are necessary or appropriate to conform such Schedule to the final judicial decisions. Any such change shall be effective with respect to—

(A) entries made on or after the date of such proclamation; and

(B) entries made on or after the effective date of the Harmonized Tariff Schedule if, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514), application for liquidation or reliquidation thereof is made by the importer to the customs officer concerned within 180 days after the effective date of such proclamation.

(4) If any protest or petition referred to in paragraph (1)(A) is not sustained in whole or in part by a final judicial decision, the entries subject to that petition or protest and made before the effective date of the Harmonized Tariff Schedule shall be liquidated or reliquidated, as appropriate, in accordance with the final judicial decision under the old Schedules.

SEC. 1212. REFERENCE TO THE HARMONIZED TARIFF SCHEDULE.

Any reference in any law to the "Tariff Schedules of the United States", "the Tariff Schedules", "such Schedules", and any other general reference that clearly refers to the old Schedules shall be treated as a reference to the Harmonized Tariff Schedule.

SEC. 1213. TECHNICAL AMENDMENTS.

(a) TRADE ACT OF 1974.—Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) is amended by striking out "including modification," and inserting "including removal, modification,".

(b) TARIFF CLASSIFICATION ACT OF 1962.—Section 201 of the Tariff Classification Act of 1962 (76 Stat. 72, 74) is repealed.

(c) TARIFF ACT OF 1930.—Section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)) is amended by adding at the end thereof the following: "This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.".

SEC. 1214. CONFORMING AMENDMENTS.

(a) CODIFIED TITLES.—

(1) Section 374(a)(3) of title 10 of the United States Code is amended by striking out "general headnote 2 of the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(2) Section 301 of title 13 of the United States Code is amended—

(A) by striking out "Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof," in subsection (b) and inserting "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof,";

(B) by striking out "item in the Tariff Schedules of the United States Annotated" in subsection (e) and inserting "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes"; and

(C) by amending subsection (f)—

(i) by striking out "item of the Tariff Schedules of the United States Annotated" and inserting "heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes", and

(ii) by striking out "under that item" each place it appears and inserting "under that heading or subheading".

(3) Section 1295(a)(7) of title 28 of the United States Code is amended by striking out "headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States" and inserting "U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

(b) TOBACCO ADJUSTMENT ACT OF 1983.—Section 213(a)(2) of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r(a)(2)) is amended by striking out "Schedule 1, Part 13, Tariff Schedules of the United States" and inserting "chapter 24 of the Harmonized Tariff Schedule of the United States".

(c) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) is amended—

(1) by striking out "general headnote 2 to the Tariff Schedules of the United States" in subsection (b) and inserting "general note 2 of the Harmonized Tariff Schedule of the United States"; and

(2) by striking out "general headnote 2 to the Tariff Schedules of the United States" in subsection (c)(2) and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(d) CONSUMER PRODUCT SAFETY ACT.—Section 15(d) and section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2064(d) and 2066(a)) are each amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(e) TOXIC SUBSTANCES CONTROL ACT.—

(1) Section 3(7) of the Toxic Substances Control Act (15 U.S.C. 2602(7)) is amended by striking out "general headnote 2 of the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(2) Section 13(a)(1) of such Act (15 U.S.C. 2612(a)(1)) is amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

(f) EMERGENCY WETLANDS RESOURCES ACT OF 1986.—Section 203 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3912) is amended by striking out "subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States" and inserting "chapter 93 of the Harmonized Tariff Schedule of the United States".

[(g) COBRA OF 1985.—Amendments to section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c)]

(h) TARIFF ACT OF 1930.—The Tariff Act of 1930 is amended as follows:

(1) Section 312(f) (19 U.S.C. 1312(f)) is amended—

(A) by amending paragraph (1)—

(i) by striking out "schedule 6, part 1, of the Tariff Schedules of the United States," and inserting "chapter 26 of the Harmonized Tariff Schedule of the United States,";

(ii) by striking out "schedule 6, part 2, of such schedules," and inserting "chapters 71 through 83 of the Harmonized Tariff Schedule of the United States,"; and

(iii) by striking out the quotation marks surrounding "metal waste and scrap" and "unwrought metal";

(B) by amending paragraph (2)(A)—

(i) by striking out "part 2 of schedule 6" and inserting "chapters 71 through 83 of the Harmonized Tariff Schedule of the United States";

(ii) by striking out "part 1 of schedule 6" and inserting "chapter 26 of the Harmonized Tariff Schedule of the United States"; and

(iii) by striking out the quotation marks surrounding "unwrought metal"; and

(C) by amending paragraph (3) by striking out "as defined in part 1 of schedule 6" and inserting "of chapter 26 of the Harmonized Tariff Schedule of the United States".

(2) Section 321(a)(2)(B) (19 U.S.C. 1321(a)(2)(B)) is amended by striking out "item 812.25 or 813.31" and inserting "subheading 9804.00.30 or 9804.00.70".

[(3) Amendment to section 337(j) (19 U.S.C. 1337(j))]

(4) Section 466(f) (19 U.S.C. 1466(f)) is amended by striking out "headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States" and inserting "general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States".

(5) Section 498(a)(1) (19 U.S.C. 1498(a)(1)) is amended—

(A) by striking out subparagraphs (A), (B), and (C) and inserting the following:

"(A) chapters 50 through 63;

"(B) chapters 39 through 43, 61 through 65, 67 and 95; and

"(C) subchapters III and IV of chapter 99;"; and

(B) by striking out "of the Tariff Schedules of the United States," and inserting "of the Harmonized Tariff Schedule of the United States,".

[(i) AUTOMOTIVE PRODUCTS TRADE ACT OF 1965.—Amendment to section 201 (a) and (b) of the Automotive Products Trade Act of 1965 (19 U.S.C. 2011 (a) and (b))]

[(j)(1)-(4) TRADE ACT OF 1974.—Amendments to section 128(b), 203(f), 404(c), 407(c)(3), and 604 of the Trade Act of 1974]

(5) Section 601(7) (19 U.S.C. 2481(7)) is amended by striking out "schedules 1 through 7 of the Tariff Schedules of the United States" and inserting "chapters 1 through 97 of the Harmonized Tariff Schedule of the United States".

[(k) TRADE AGREEMENTS ACT OF 1979.—Amendment to section 1102(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2581(b)(3))]

(l) ACT OF MARCH 2, 1897.—Section 1 of the Act of March 2, 1897 (29 Stat. 604) (21 U.S.C. 41) is amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(m) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—Section 1001(a)(2) of the Controlled Substances Import and Export Act (21 U.S.C. 951(a)(2)) is amended by striking out "general headnote 2 to the Tariff Schedules of the United States" and inserting "general note 2 of the Harmonized Tariff Schedule of the United States".

[(n) COMPREHENSIVE ANTI-APARTHEID ACT OF 1986.—Amendment to Section 309(b) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5059(b))]

(o) STRATEGIC AND CRITICAL MATERIALS STOCK PILING ACT.—Section 13 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h-4) is amended by striking out "general headnote 3(d) of the Tariff Schedules of the United States" and inserting "general note 3(b) of the Harmonized Tariff Schedule of the United States".

(p) INTERNAL REVENUE CODE OF 1986.—

(1) Section 7652(e)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 7652(e)(3)) is amended by striking out "item 169.13 or 169.14 of the Tariff Schedules of the United States" and inserting "subheading 2208.40.00 of the Harmonized Tariff Schedule of the United States".

(2) Section 9504(b)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 9504(b)(1)(B)) is amended—

(A) by striking out "subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States" and inserting "heading 9507 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "subpart D of part 6 of schedule 6 of such Schedules" and inserting "chapter 89 of the Harmonized Tariff Schedule of the United States".

[(q) CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—Amendments to sections 212(a)(1)(C) and 213 of the Caribbean Basin Economic Recovery Act]

(r) ACT RELATING TO REFORESTATION TRUST FUND.—Section 303(b)(1) of the Act of October 14, 1980 (16 U.S.C. 1606a(b)(1)) is amended to read as follows:

"(b)(1) Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after January 1. 1989, under headings 4401 through 4412 and subheadings 4418.50.00, 4418.90.20, 4420.10.00, 4420.90.80, 4421.90.10 through 4421.90.20, and 4421.90.70 of chapter 44, subheadings 6808.00.00 and 6809.11.00 of chapter 68 and subheading 9614.10.00 of chapter 96 of the Harmonized Tariff Schedule of the United States.".

(s) TRADE AND TARIFF ACT OF 1984.—The Trade and Tariff Act of 1984 (Public Law 98-573) is amended as follows:

(1) Section 231(a)(1) is amended by striking out "Tariff Schedules of the United States" and inserting "Harmonized Tariff Schedule of the United States".

(2) Section 239 is amended by striking out "headnote 6 of part 4 of schedule 8 of the Tariff Schedules of the United States" and inserting "U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

(3) Section 240 is amended—

(A) by striking out "headnote 6(a) of part 4 of schedule 8 of the Tariff Schedules of the United States" in subsection (a)(1)(A) and inserting "U.S. note 6(a) to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "headnote 1 of part 4 of schedule 8" in subsection (e) and inserting "U.S. note 1 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States".

[(4) Amendments to section 404(e)]

(t) TRADE AGREEMENTS ACT OF 1979.—The Trade Agreements Act of 1979 (Public Law 96-39) is amended as follows:

(1) Section 701(c)(1) is amended to read as follows:

"(1) QUOTA CHEESE.—The term 'quota cheese' means the articles provided for in the following subheadings of the Harmonized Tariff Schedule of the United States:

"(A) 0406.10.00 (except whey cheese, curd, and cheese, cheese substitutes for cheese mixtures containing: Roquefort, Stilton produced in the United Kingdom, Bryndza, Gjetost, Goya in original loaves, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(B) 0406.20.20 (except Stilton produced in the United Kingdom);

"(C) 0406.20.30;

"(D) 0406.20.35;

"(E) 0406.20.40;

"(F) 0406.20.50;

"(G) 0406.20.60 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(H) 0406.30.10 (except Stilton produced in the United Kingdom);

"(I) 0406.30.20;

"(J) 0406.30.30;

"(K) 0406.30.40;

"(L) 0406.30.50;

"(M) 0406.30.60 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses);

"(N) 0406.40.60 (except Stilton produced in the United Kingdom);

"(O) 0406.40.80 (except Stilton produced in the United Kingdom);

"(P) 0406.90.10;

"(Q) 0406.90.15;

"(R) 0406.90.30 (except Goya in original loaves);

"(S) 0406.90.35;

"(T) 0406.90.40;

"(U) 0406.90.45 (except Gammelost and Nokkelost);

"(V) 0406.90.65;

"(W) 0406.90.70; and

"(X) 0406.90.80 (except cheeses containing or processed from: Stilton produced in the United Kingdom, Roquefort, Bryndza, Gjetost, Gammelost and Nokkelost, cheese made from sheep's and goat's milk and soft ripened cow's milk cheeses).".

(2) Section 703 is amended—

(A) by striking out "item 950.15 of the Tariff Schedules of the United States" and inserting "subheading 9904.10.63 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "item 950.16 of the Tariff Schedules of the United States" and inserting "subheading 9904.10.66 of the Harmonized Tariff Schedule of the United States".

(3) Section 855 is amended—

(A) by striking out "item set forth in subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States" in subsection (a) and inserting "article provided for in subheading 2207.10.30 and heading 2208 of the Harmonized Tariff Schedule of the United States"; and

(B) by striking out "item set forth in rate column numbered 1 of subpart D of part 12 of schedule 1 of the Tariff Schedules of the United States" in subsection (b) and inserting "article as set forth in rate of duty column numbered 1 of subheading 2207.10.30 and heading 2208 of the Harmonized Tariff Schedule of the United States".

[(u) MEAT IMPORT ACT OF 1979.—Amendments to the Meat Import Act of 1979 (19 U.S.C. 1202 note)]

(v) National Wool Act of 1954.—Sections 704 and 705 of the National Wool Act of 1954 (7 U.S.C. 1783 and 1784) are each amended by striking out "all articles subject to duty under schedule 11 of the Tariff Act of 1930, as amended" and inserting "wool or fine animal hair, and articles thereof, as provided for in the Harmonized Tariff Schedule of the United States".

(w) Agricultural Act of 1949.—Section 103(f)(3) of the Agricultural Act of 1949 (7 U.S.C. 1444(f)(3)) is amended by striking out "items 955.01 through 955.03 of the Appendix to the Tariff Schedules of the United States" and inserting "subheadings 9904.30.10 through 9904.30.30 of chapter 99 of the Harmonized Tariff Schedule of the United States".

[SEC. 1215. NEGOTIATING AUTHORITY FOR CERTAIN ADP EQUIPMENT.

[Amends section 128(b) of the Trade Act of 1974 (19 U.S.C. 2138(b))]

SEC. 1216. COMMISSION REPORT ON OPERATION OF SUBTITLE.

The Commission, in consultation with other appropriate Federal agencies, shall prepare, and submit to the Congress and to the President, a report regarding the operation of this subtitle during the 12-month period commencing on the effective date of the Harmonized Tariff Schedule. The report shall be submitted to the Congress and to the President before the close of the 6-month period beginning on the day after the last day of such 12-month period.

SEC. 1217. EFFECTIVE DATES.

(a) Accession to Convention and Provisions Other Than the Implementation of the Harmonized Tariff Schedule.—Except as provided in subsection (b), the provisions of this subtitle take effect on the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988.

(b) Implementation of the Harmonized Tariff Schedule.—The effective date of the Harmonized Tariff Schedule is January 1, 1989. On such date—

(1) the amendments made by sections 1204(a), 1213, 1214, and 1215 take effect and apply with respect to articles entered on or after such date; and

(2) sections 1204(c), 1211, and 1212 take effect.

B. EXCERPTS FROM THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) RELATING TO SPECIAL DUTY TREATMENT

1. American goods returned (HTS item 9801.00.10)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Annotated for Statistical Reporting Purposes

SUBCHAPTER I

ARTICLES EXPORTED AND RETURNED, NOT ADVANCED OR IMPROVED IN CONDITION; ANIMALS EXPORTED AND RETURNED

U.S. Notes

1. The subheadings in this subchapter (except subheadings 9801.00.70 and 9801.00.80) shall not apply to any article:

(a) Exported with benefit of drawback;

(b) Of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and was not refunded; or

(c) Manufactured or produced in the United States in a customs bonded warehouse or under subheading 9813.00.05 and exported under any provision of law.

* * * * * * *

Heading/ Subheading	Article description	Rates of duty		
		1		2
		General	Special	
9801.00.10	Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad	Free	—	

2. American goods repaired or altered abroad (HTS items 9802.00.40, .50)

American metal articles processed abroad (HTS item 9802.00.60)

American components assembled abroad (HTS item 9802.00.80)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Annotated for Statistical Reporting Purposes

SUBCHAPTER II

ARTICLES EXPORTED AND RETURNED, ADVANCED OR IMPROVED ABROAD

U.S. Notes

1. This subchapter shall not apply to any article exported:

(a) From continuous customs custody with remission, abatement or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under subheading 9813.00.05.

2. Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article, and, if subject to a duty which is wholly or partly ad valorem, shall be dutiable, except as otherwise prescribed in this part, on its full value determined in accordance with section 402 of the Tariff Act of 1930, as amended. If such product or such article is dutiable at a rate dependent upon its value, the value for the purpose of determining the rate shall be its full value under the said section 402.

3. *Articles repaired, altered, processed or otherwise changed in condition abroad.*—The following provisions apply only to subheadings 9802.00.40 through 9802.00.60, inclusive:

(a) The value of repairs, alterations, processing or other change in condition outside the United States shall be:

(i) The cost to the importer of such change; or

(ii) If no charge is made, the value of such change,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of the change shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) No appraisement of the imported article in its changed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.

(c) The duty upon the value of the change in condition shall be at the rate which would apply to the article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the article, as returned to the United States, is subject to a specific or compound rate of duty, such rate shall be converted to the ad valorem rate which when applied to the full value of such article determined in accordance with said section 402 would provide the same amount of duties as the specific or compound rate. In order to compute the duties due, the ad valorem rate so obtained shall be applied to the value of the change in condition made outside the United States.

(d) For purposes of subheading 9802.00.60, the term "*metal*" covers (1) the base metals enumerated in additional U.S. note 1 to section XV; (2) arsenic, barium, boron, calcium, mercury, selenium, silicon, strontium, tellurium, thorium, uranium and the rare-earth elements; and (3) alloys of any of the foregoing.

4. *Articles assembled abroad with components produced in the United States.*—The following provisions apply only to subheading 9802.00.80:

(a) The value of the products of the United States assembled into the imported article shall be:

(i) The cost of such products at the time of the last purchase; or

(ii) If no charge is made, the value of such products at the time of the shipment for exportation,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 of the Tariff Act of 1930, as amended.

(b) The duty on the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subchapter. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in such proportion as the cost or value of such products of the United States bears to the full value of the imported article.

5. No imported article shall be accorded partial exemption from duty under more than one subheading in this subchapter.

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
	Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means:			
	Articles exported for repairs or alterations:			
9802.00.40	Repairs or alterations made pursuant to a warranty	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).	Free (B, C, CA)	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).
9802.00.50	Other	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter) (B, C, CA).	A duty upon the value of the repairs or alterations (see U.S. note 3 of this subchapter).
9802.00.60	Any article of metal (as defined in U.S. note 3(d) of this subchapter) manufactured in the United States or subjected to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned to the United States for further processing	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter).	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter) (B, C, CA).	A duty upon the value of such processing outside the United States (see U.S. note 3 of this subchapter).
9802.00.80	Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter).	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter) (B, C, CA).	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter).

3. Personal (tourist) exemptions (HTS items 9804.00.65, .70)

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Annotated for Statistical Reporting Purposes

SUBCHAPTER IV

PERSONAL EXEMPTIONS EXTENDED TO RESIDENTS AND NONRESIDENTS

U.S. Notes

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2. In the case of persons arriving from a contiguous country which maintains a free zone or free port, if the Secretary of the Treasury deems it necessary in the public interest and to facilitate enforcement of the requirement that the exemption in subheading 9804.00.70 shall apply only to articles acquired as an incident of the foreign journey, he shall prescribe by regulation or instruction, the application of which may be restricted to one or more ports of entry, that such exemption shall be allowed only to residents who have remained beyond the territorial limits of the United States for not less than a specified period, not to exceed 24 hours, and, after the expiration of 90 days after the date of such regulation or instruction, allowance of the said exemption shall be subject to the limitations so prescribed.

3. A person arriving in the United States:

(a) On duty as an employee of a vessel, vehicle or aircraft, engaged in international traffic, or

(b) From a trip during which he was so employed,

shall not be entitled to the exemptions provided for in this subchapter (other than those in subheading 9804.00.80), unless he is permanently leaving such employment without the intention of resuming it on the same or another carrier.

Heading/ subheading	Article description	Rates of duty 1 General	Rates of duty 1 Special	Rates of duty 2
	Articles imported by or for the account of any person arriving in the United States who is a returning resident thereof (including American citizens who are residents of American Samoa, Guam or the Virgin Islands of the United States) (con.):			
	Other articles acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under subheading 9804.00.65 or 9804.00.70 within 30 days preceding his arrival, and does not claim an exemption under the other item on his arrival:			
9804.00.65	Articles, accompanying a person, not over $400, in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages and including not more than 200 cigarettes and 100 cigars	Free		Free
9804.00.70	Articles whether or not accompanying a person, not over $800 in aggregate fair market value in the country of acquisition, including: (a) but only in the case of an individual who has attained the age of 21, not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in American Samoa, Guam or the Virgin Islands of the United States, and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions, and. (b) not more than 1,000 cigarettes, not more than 200 of which shall have been acquired elsewhere than in such insular possessions, and not more than 100 cigars.			

Heading/ subheading	Article description	Rates of duty 1 General	Rates of duty 1 Special	Rates of duty 2
	if such person arrives directly or indirectly from such insular possessions, not more than $400 of which shall have been acquired elsewhere than in such insular possessions (but this subheading does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions)	Free		Free

4. Products of U.S. insular possessions (General Note 3(a)(iv))

Products of Insular Possession

(A) Except as provided in additional U.S. note 5 of chapter 91 and except as provided in additional U.S. note 3 of chapter 96, and except as provided in section 423 of the Tax Reform Act of 1986, goods imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column 1 of the tariff schedule, except that all such goods the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to goods described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(B) In determining whether goods produced or manufactured in any such insular possession contain foreign materials to the value of more than 70 percent, no material shall be considered foreign which either—

(1) at the time such goods are entered, or

(2) at the time such material is imported into the insular possession,

may be imported into the customs territory from a foreign country, and entered free of duty; except that no goods containing material to which (2) of this subparagraph applies shall be exempt from duty under subparagraph (A) unless adequate documentation is supplied to show that the material has been incorporated into such goods during the 18-month period after the date on which such material is imported into the insular possession.

(C) Subject to the limitations imposed under sections 503(b) and 504(c) of the Trade Act of 1974, goods designated as eligible under section 503 of such Act which are imported from an insular possession of the United States shall receive duty treatment no less favorable than the treatment afforded such goods imported from a beneficiary developing country under title V of such Act.

(D) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such goods when they are imported from a beneficiary country under such Act.

* * * * * * *

C. GENERALIZED SYSTEM OF PREFERENCES

Title V of Trade Act of 1974, as amended

[19 U.S.C. 2416; P.L. 93-618, as amended by P.L. 94-455, P.L. 96-39, P.L. 98-573, P.L. 99-47, P.L. 99-514, P.L. 99-570, and P.L. 100-418]

SEC. 501. AUTHORITY TO EXTEND PREFERENCE.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President of the United States designating such country as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation (either by issuing an Executive order of Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation which has the effect of terminating such designation) unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the consideration entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate

means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(4) For purposes of this title, the term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) No designation shall be made under this section with respect to any of the following:

Australia
Austria
Canada
Czechoslovakia
European Economic Community member states
Finland
Germany (East)
Iceland
Japan
Monaco
New Zealand
Norway
Poland
Republic of South Africa
Sweden
Switzerland
Union of Soviet Socialist Republics

In addition, the President shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement on Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless—

(D) the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(6) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

(7) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

[(d) Amendment of general headnote 3(a) to the Tariff Schedules of the United States relating to products of insular possessions.]

(e)(1) The President may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The President may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The President shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The President shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the President shall designate those articles he considers appropriate to be eligible articles for purposes of this title by Executive order or Presidential proclamation.

(b) the duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) if the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3) plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

(B) watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this article on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

SEC. 504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 502 and 502(c).

(2) The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The President shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 1, 1987, and periodically thereafter, the President shall conduct a general review of eligible articles based on the considerations described in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(D)(i) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered during any calendar year beginning after 1986 the aggregate value of which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during that year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The President shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The President may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

(f)(1) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" or "50 percent", and

(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means a sum of—

(i) $8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) $8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

General Note 3(c)(ii) of Harmonized Tariff Schedule

Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences (GSP)

(A) The following countries, territories and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3)) are designated beneficiary developing countries for the purposes of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*):

Independent Countries

Angola
Antigua and Barbuda
Argentina
Bahamas, The
Bangladesh
Barbados
Belize
Benin
Bhutan
Bolivia
Botswana
Brazil
Burkina Faso
Burma
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Cyprus
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Fiji
Gambia, The
Ghana
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Honduras
India
Indonesia
Israel
Jamaica
Jordan
Kenya
Kiribati
Lebanon
Lesotho
Liberia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands, Republic of
Mauritania
Mauritius
Mexico
Micronesia, Federated States of
Morocco
Mozambique
Nepal
Niger
Oman
Pakistan
Papua New Guinea
Peru
Philippines
Rwanda
Saint Lucia
Saint Vincent and the Grenadines
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Solomon Islands
Somalia
Sri Lanka
Sudan
Suriname
Swaziland
Syria
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
Uganda
Uruguay
Vanuatu
Venezuela
Western Samoa
Yemen Arab Republic (Sanaa)
Yugoslavia
Zaire
Zambia
Zimbabwe

Non-Independent Countries and Territories

Anguilla
Aruba
British Indian Ocean Territory
Cayman Islands
Christmas Island (Australia)
Cocos (Keeling) Islands
Cook Islands
Falkland Islands (Islas Malvinas)
French Polynesia
Gibraltar
Greenland
Heard Island and McDonald Islands
Macau
Montserrat
Netherlands Antilles
New Caledonia
Niue
Norfolk Island
Pitcairn Islands
Saint Christopher and Nevis
Saint Helena
Tokelau

Trust Territory of the Pacific Islands
  (Palau)
Turks and Caicos Islands
Virgin Islands, British
Wallis and Futuna
Western Sahara

Associations of Countries (treated as one country)

Member Countries of the Cartagena Agreement (Andean Group)

Consisting of:

Bolivia
Colombia
Ecuador
Peru
Venezuela

Members of the Association of South East Asian Nations (ASEAN)

Consisting of:

Indonesia
Malaysia
Philippines
Thailand

Member Countries of the Caribbean Common Market (CARICOM)

Consisting of:

Antigua and Barbuda
Barbados
Belize
Dominica
Grenada
Guyana
Jamaica
Montserrat
Saint Christopher and
  Nevis
Saint Lucia
Saint Vincent and the
  Grenadines
Trinidad and Tobago

(B) The following beneficiary countries are designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the Trade Act of 1974, as amended:

Bangladesh
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Cape Verde
Central African Republic
Chad
Comoros
Djibouti
Equatorial Guinea
Gambia, The
Guinea
Guinea-Bissau
Haiti
Lesotho
Malawi
Maldives
Mali
Nepal
Niger
Rwanda
Sao Tome and Principe
Sierra Leone
Somalia
Sudan
Tanzania
Togo
Uganda
Western Samoa
Yemen Arab Republic (Sanaa)

Whenever an eligible article is imported into the customs territory of the United States directly from one of the countries designated as a least-developed beneficiary developing country, it shall be entitled to receive the duty-free treatment provided for in subdivision (c)(ii)(C) of this note without regard to the limitation on preferential treatment of eligible articles in section 504(c) of the Trade Act, as amended (19 U.S.C. 2464(c)).

D. CARIBBEAN BASIN INITIATIVE (CBI)

Carribbean Basin Economic Recovery Act, as amended

[19 U.S.C. 2701; P.L. 98-67; title II as amended by P.L. 98-573, P.L. 99-514, P.L. 99-570, P.L. 100-418, and P.L. 100-647]

SEC. 201. SHORT TITLE.

This title may be cited as the "Caribbean Basin Economic Recovery Act".

SUBTITLE A—DUTY-FREE TREATMENT

SEC. 211. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 212. BENEFICIARY COUNTRY.

(a)(1) For purposes of this title—

(A) The term "beneficiary country" means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "HTS" means Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) In designating countries as "beneficiary countries" under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras

Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Cayman Islands
Montserrat
Netherlands Antilles
Saint Christopher-Nevis
Turks and Caicos Islands
Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed

for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens.

Paragraphs (1), (2), (3), and (5) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

[(d) Amendment of general headnote 3(a) to the TSUS relating to products of insular possessions.]

(e)(1) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met—

(A) withdraw or suspend the designation of any country as a beneficiary country, or

(B) withdraw, suspend, or limit the application of duty-free treatment under this subtitle to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, and subject to section 423 of the Tax Reform Act of 1986, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such

United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(4) Notwithstanding section 311 of the Tariff Act of 1930, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(b) The duty-free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States; or

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply.

(c)(1) As used in this subsection—

(A) The term "sugar and beef products" means—

(i) sugars, sirups, and molasses provided for in subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the Harmonized Tariff Schedule of the United States, and

(ii) articles of beef or veal, however provided for in chapters 2 and 16 of the Harmonized Tariff Schedule of the United States.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this title to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this title;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this title to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—

(A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 212, does not submit a Plan to the President for evaluation;

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2) (A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

(d) For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses classified under subheadings 1701.11.00, 1701.12.00, 1701.91.20, 1701.99.00, 1702.90.30, 1806.10.40, and 2106.90.10 of the Harmonized Tariff Schedule of the United States shall be governed in the following manner:

(1)(A) For all beneficiary countries, except those subject to subparagraph (B) and paragraph (2), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of this title; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(B) As an alternative to subparagraph (A), the President may at the request of a beneficiary country not subject to paragraph (2) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

(2) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of

1974, the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Metric tons:

Dominican Republic	780,000
Guatemala	210,000
Panama	160,000

Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (3).

(3) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (1)(B) or (2) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (1)(B) and (2) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(4) Any quantitative limitation imposed on a beneficiary country under paragraphs (1)(B) and (2) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provisions of law.

(e)(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed pursuant to section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under section 201(b) of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any proclamation issued pursuant to section 203 of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) *If any article is subject to import relief at the time duty-free* treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the proclamation of import relief pursuant to section 202(a)(1) of the Trade Act of 1974,

(B) on the day the President makes a determination pursuant to section 203(b)(2) of such Act not to impose import relief,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheading 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; and

(D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(g) No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 214.–MEASURES FOR PUERTO RICO AND UNITED STATES INSULAR POSSESSIONS.

[(a) Amendments of general headnote 3(a) to the TSUS relating to products of insular possessions.]

(b) Item 813.31 of the TSUS is amended by striking out "4 liters" and inserting in lieu thereof "5 liters", and by inserting after "United States,", "and not more than 4 liters of which shall have been produced elsewhere than in such insular possessions,".

(c) If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title. The President shall submit a report to the Congress on the measures he takes.

(d) Section 1112 of the Trade Agreements Act of 1979 (19 U.S.C. 2582) is repealed.

(e) No action pursuant to this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico.

(f) For purposes of chapter 1 of title II of the Trade Act of 1974, the term "industry" shall include producers located in the United States insular possessions.

(g) Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1954) shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act if—

(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

(2) the Governor of the United States Virgin Islands determines that such discharge will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable

risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

SEC. 215. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THIS ACT.

(a) The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during—

(1) the twenty-four-month period beginning with the date of enactment of this Act; and

(2) each calendar year occuring thereafter until duty-free treatment under this title is terminated under section 216(b).

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b)(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c)(1) Each report required under subsection (a) shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 216. IMPACT STUDY BY SECRETARY OF LABOR.

The Secretary of Labor, in consulation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this title have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

SEC. 217. FEASIBILITY STUDY REGARDING A CARIBBEAN TRADE INSTITUTE.

(a) The Secretary of State shall prepare a study regarding the feasibility of establishing a Caribbean Trade Institute in Harlem, New York City, supported by a combination of Federal and private funds.

(b) The study shall include, but not be limited to, an assessment of the extent to which, and the means by which, a Caribbean Trade Institute could—

(1) facilitate cooperation between public and private entities interested in engaging in or furthering Caribbean trade;

(2) serve as a catalyst for greater cultural exchange between the United States and Caribbean nations; and

(3) facilitate expansion of job opportunities both in the United States and the Caribbean Basin.

The study shall also include suggestions regarding the organization and staffing of such an institute.

(c) The study required by this section shall be submitted to the Congress within six months after the date of enactment of this Act.

SEC. 218. EFFECTIVE DATE OF SUBTITLE AND TERMINATION OF DUTY-FREE TREATMENT.

(a) EFFECTIVE DATE.—This subtitle shall take effect on the date of the enactment of this Act.

(b) TERMINATION OF DUTY-FREE TREATMENT.—No duty-free treatment extended to beneficiary countries under this subtitle shall remain in effect after September 30, 1995.

SUBTITLE B—TAX PROVISIONS

SEC. 221. PAYMENT OF EXCISE TAXES COLLECTED ON RUM TO PUERTO RICO AND THE UNITED STATES VIRGIN ISLANDS.

(A) IN GENERAL.—Section 7652 of the Internal Revenue Code of 1954 (relating to shipments to the United States) is amended by inserting after subsection (b) the following new subsection:

"(c) SHIPMENTS OF RUM TO THE UNITED STATES.—

"(1) EXCISE TAXES ON RUM COVERED INTO TREASURIES OF PUERTO RICO AND VIRGIN ISLANDS.—All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

"(2) SECRETARY PRESCRIBES FORMULA.—The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

"(3) RUM DEFINED.—For purposes of this subsection, the term 'rum' means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

"(4) COORDINATION WITH SUBSECTIONS (a) AND (b).—Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles imported into the United States after June 30, 1983.

SEC. 222. TREATMENT OF CARIBBEAN CONVENTIONS, ETC.

(a) GENERAL RULE.—Subsection (h) of section 274 of the Internal Revenue Code of 1954 (relating to attendance at conventions, etc.) is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF CONVENTIONS IN CERTAIN CARIBBEAN COUNTRIES.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'North American area' includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

"(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

"(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

"(B) BENEFICIARY COUNTRY.—For purposes of this paragraph, the term 'beneficiary country' has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, except that such term shall include Bermuda.

"(C) AUTHORITY TO CONCLUDE EXCHANGE OF INFORMATION AGREEMENTS.—

"(i) IN GENERAL.—The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

"(ii) NONDISCLOSURE OF QUALIFIED CONFIDENTIAL INFORMATION SOUGHT FOR CIVIL TAX PURPOSES.—An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

"(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

"(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

"(iii) QUALIFIED CONFIDENTIAL INFORMATION DEFINED.—For purposes of this subparagraph, the term 'qualified confidential information' means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

"(iv) CIVIL TAX PURPOSES.—For purposes of this subparagraph, the determination of whether information is sought only for civil purposes shall be made by the requesting party.

"(D) COORDINATION WITH SECTION 6103.—Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4).

"(E) DETERMINATIONS PUBLISHED IN THE FEDERAL REGISTER.—The following shall be published in the Federal Register—

"(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

"(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

"(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to conventions, seminars, or other meetings which begin after June 30, 1983.

SEC. 223. REPORT WITH RESPECT TO USE OF CARIBBEAN BASIN TAX HAVENS.

The Secretary of the Treasury shall, not later than ninety days after the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on—

(1) the level at which Caribbean Basin tax havens are being used to evade or avoid Federal taxes, and the effect on Federal revenues of such use,

(2) any information he may have on the relationship of such use to drug trafficking and other criminal activities, and

(3) current antitax haven enforcement activities of the Department of the Treasury.

SUBTITLE C—SENSE OF THE CONGRESS REGARDING SUGAR IMPORTS

SEC. 231. SUGAR IMPORTS.

It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States.

Section 423 of Tax Reform Act of 1986 Relating to Treatment of Imports of Ethyl Alcohol

[19 U.S.C. 2703nt; P.L. 99-514]

(a) IN GENERAL.—Except as provided in subsection (b), no ethyl alcohol or a mixture thereof may be considered—

(1) for purposes of general headnote 3(a) of the Tariff Schedules of the United States, to be—

(A) the growth or product of an insular possession of the United States,

(B) manufactured or produced in an insular possession from materials which are the growth, product, or manufacture of any such possession, or

(C) otherwise eligible for exemption from duty under such headnote as the growth or product of an insular possession; or

(2) for purposes of section 213 of the Caribbean Basin Economic Recovery Act, to be—

(A) an article that is wholly the growth, product, or manufacture of a beneficiary country,

(B) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country,

(C) a material produced in a beneficiary country, or

(D) otherwise eligible for duty-free treatment under such Act as the growth, product, or manufacture of a beneficiary country;

unless the ethyl alcohol or mixture thereof is an indigenous product of that insular possession or beneficiary country.

(b) EXCEPTION.—

(1) Subject to the limitation in paragraph (2), subsection (a) shall not apply to ethyl alcohol that is imported into the United States during calendar years 1987 and 1988 and produced in—

(A) an azeotropic distillation facility located in an insular possession of the United States or a beneficiary country, if that facility was established before, and in operation on, January 1, 1986, or

(B) an azeotropic distillation facility—

(i) at least 50 percent of the total value of the equipment and components of which were—

(I) produced in the United States, and

(II) owned by a corporation at least 50 percent of the total value of the outstanding shares of stock of which were owned by a United States person (or persons) on or before January 1, 1986, and

(ii) substantially all of the equipment and components of which were, on or before January 1, 1986—

(I) located in the United States under the possession or control of such corporation,

(II) ready for shipment to, and installation in, a beneficiary country, and

(iii) which—

(I) has on the date of enactment of this Act, or

(II) will have at the time such facility is placed in service (based on estimates made before the date of enactment of this Act),

a stated capacity to produce not more than 42,000,000 gallons of such product per year.

(2) The exception provided under paragraph (1) shall cease to apply during each of calendar years 1987 and 1988 to ethyl alcohol produced in a facility described in subparagraph (A) or (B) or paragraph (1) after 20,000,000 gallons of ethyl alcohol produced in that facility are entered into the United States during that year.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ethyl alcohol or a mixture thereof" means (except for purposes of subsection (e)) ethyl alcohol or any mixture thereof described in item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) Ethyl alcohol or a mixture thereof may be treated as being an indigenous product of an insular possession or beneficiary country only if the ethyl alcohol or a mixture thereof—

(A) has been both dehydrated and produced by a process of full-scale fermentation within the insular possession or beneficiary country; or

(B) has been dehydrated within the insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than—

(i) 30 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1987, except that this clause shall not apply to any ethyl alcohol or mixture which has been dehydrated in the United States Virgin Islands by a facility with respect to which—

(I) the owner has entered into a binding contract for the engineering and design of full-scale fermentation capacity, and

(II) authorization for operation of a full-scale fermentation facility has been granted by the Island authorities before May 1, 1986,

(ii) 60 percent of the value of the ethyl alcohol or mixture, if entered during calendar year 1988, and

(iii) 75 percent of the value of the ethyl alcohol or mixture, if entered after December 31, 1988.

(3) The term "beneficiary country" has the meaning given to such term under section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702).

(4) The term "United States person" has the meaning given to such term by section 7701(a)(3) of the Internal Revenue Code of 1986.

(5) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(d) AMENDMENT TO APPENDIX TO SCHEDULES—The item designation for item 901.50 of the Appendix to the Tariff Schedules of the United States is amended to read as follows: "Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) or any mixture containing such ethyl alcohol (provided for in part 1, 2 or 10, schedule 4) if such ethyl alcohol or mixture is to be used as fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in item 475.25), or is suitable for any such uses."

(e) DRAWBACKS.—

(1) For purposes of subsections (b) and (j)(2) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313), as amended by section 1888(2) of this Act, any ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) which is subject to the additional duty imposed by item 901.50 of the Appendix to such Schedules may be treated as being fungible with, or of being of the same kind and quality as, any other imported ethyl alcohol (provided for in item 427.88 of such Schedules) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) only if such other imported ethyl alcohol or mixture thereof is also subject to such additional duty.

(2) Paragraph (1) shall not apply with respect to ethyl alcohol (provided for in item 427.88 of the Tariff Schedules of the United States) or mixture containing such ethyl alcohol (provided for in part 1, 2, or 10 of schedule 4 of such Schedules) that is exempt from the additional duty imposed by item 901.50 of the Appendix to such Schedules by reason of—

(A) subsection (b), or

(B) any agreement entered into under section 102(b) of the Trade Act of 1974.

(f) CONFORMING AMENDMENTS.—

(1) [See General Headnote 3(a).]

(2) [Amendment to section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)).

(3) The headnotes to subpart A of part 1 of the Appendix to the Tariff Schedules of the United States are amended by adding at the end thereof the following:

"2. For purposes of item 901.50, the phrase 'is suitable for any such uses' does not include ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is certified by the importer of record to the satisfaction of the Commissioner of Customs (hereinafter in this headnote referred to as the 'Commissioner') to be ethyl alcohol or a mixture containing such ethyl alcohol imported for uses other than liquid motor fuel use or use in producing liquid motor fuel related mixtures. If the importer of record certifies nonliquid motor fuel use for purposes of establishing actual use or suitability under item 901.50, the Commissioner shall not liquidate the entry of ethyl alcohol until he is satisfied that the ethyl alcohol has in fact not been used for liquid motor fuel use or use in producing liquid motor fuel related mixtures. If he is not satisfied within a reasonable period of time not less than 18 months from the date of entry, then the duties provided for in item 901.50 shall be payable retroactive to the date of entry. Such duties shall also become payable, retroactive to the date of entry, immediately upon the diversion to liquid motor fuel use of any ethyl alcohol or ethyl alcohol mixture certified upon entry as having been imported for nonliquid motor fuel use."

(g) Effective Period.—

(1) The provisions of, and the amendments made by, this section (other than subsection (e)) shall apply to articles entered—

(A) after December 31, 1986, and

(B) before the expiration of the effective period of item 901.50 of the Appendix to the Tariff Schedules of the United States.

(2) The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

General Note 3(v)(A) of Harmonized Tariff Schedule

Products of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA).

(A) The following countries and territories or successor political entities are designated beneficiary countries for the purposes of the CBERA, pursuant to section 212 of that Act (19 U.S.C. 2702):

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Saint Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
Virgin Islands, British

E. CUSTOMS VALUATION

Section 402 of Tariff Act of 1930, as amended

[19 U.S.C. 1401(a); P.L. 71-361, as amended by P.L. 96-39, and P.L. 96-490]

SEC. 402. VALUE.

(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection (b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provided for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of an~~y subseq~~uent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are not restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States; or

(ii) the deductive value or computed value for identical merchandise or similar merchandise;

but only if each value referred to in clause (i) or (ii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incured for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and the seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) Transaction Value of Identical Merchandise and Similar Merchandise.—(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, and sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost of the value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the purposes of this Act on the basis of a value that is derived from the methods set forth in such subsection, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of the merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for merchandise being appraised;

(E) the price of the merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers, and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term "generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured:

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term "identical merchandise" means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirement under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all repects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term "packing costs" means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term "similar merchandise" means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirements set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term "sufficient information", when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) to the price actually paid or payable,

(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) as profit or general expense;

(B) and difference taken into account for purposes of subsection (b)(2)(C); or

(C) any adjustment made under subsection (c)(2);

means information that establishes the accuracy of such amount, difference, or adjustment.

(b) REPEAL OF EXISTING ALTERNATIVE VALUATION STANDARDS.—Section 402a of the Tariff Act of 1930 (19 U.S.C. 1402) is repealed.

F. CUSTOMS USER FEES

Section 13031 of Consolidated Budget Reconciliation Act of 1985, as amended

[19 U.S.C. 58c; P.L. 99-272, as amended by P.L. 99-509, P.L. 99-514, P.L. 100-203, P.L. 100-418, P.L. 100-449, and P.L. 100-647]

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial truck, $5.

(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100.

(9) For the processing of any merchandise (other than an article that is—

(A) provided for under any item in chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80,

(B) a product of an insular possession of the United States, or

(C) a product of any country listed in general note 3(c)(v) of such Schedules)

that is formally entered, or withdrawn from warehouse for consumption—

(i) after November 30, 1986, and

(ii) before October 1, 1987;

a fee in an amount equal to 0.22 percent ad valorem.

(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for

consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

(A) 0.17 percent ad valorem, or

(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

(ii) the excess, if any, of—

(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.

(b) LIMITATIONS OF FEES.—(1) No fee may be charged under subsection (a) for customs services provided in connection with—

(A) the arrival of any passenger whose journey—

(i) originated in—

(I) Canada,

(II) Mexico,

(III) a territory or possession of the United States, or

(IV) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)), or

(ii) originated in the United States and was limited to—

(I) Canada,

(II) Mexico,

(III) territories and possessions of the United States, and

(IV) such adjacent islands;

(B) the arrival of any railroad car that is part of a train which originates and terminates in the same country, but only if—

(i) such car is part of such train when such train departs from the United States, and

(ii) no passengers board or disembark from such train, and no cargo is loaded or unloaded from such train, while such train is within any country other than the country in which such train originates and terminates; or

(C) the arrival of any ferry.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar

year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(4) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

(A) who is in transit to a destination outside the customs territory of the United States, and

(B) for whom customs inspectional services are not provided.

(5) No fee may be charged under subsection (a)(1) for the arrival of—

(A) a vessel during a calendar year after a total of $5,955 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under section (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraphs (2), (3), or (4) of subsection (a) for the arrival of any—

(A) commercial truck,

(B) railroad car, or

(C) private vessel,

that is being transported, at the time of the arrival, by any vessel that is not a ferry.

(8)(A) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

(i) be paid by the importer of record of the merchandise;

(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930;

(iii) in the case of merchandise classified under subparagraph 9802.00.60 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

(iv) in the case of merchandise classified under subparagraph 9802.00.80 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under subparagraph 9802.00.60 or subparagraph 9802.00.80 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a) (9) and (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.

(B)(i) By no later than the date that is 5 days after the date on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations, the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

(ii) No determination is required under clause (i) with respect to an appropriation to the United States Customs Service if the funds appropriated are available for less than 60 days.

(9) The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31, United States Code, or section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), for the services that it provides at the facilities.

(10) The fee charged under subsection (a)(10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ferry" means any vessel which is being used—

(A) to provide transportation only between places that are no more than 300 miles apart, and

(B) to transport only—

(i) passengers, or

(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods, and

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by general note 2 of the Harmonized Tariff Schedule of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(5) The term "barge or other bulk carrier" means any vessel which—

(A) is not self-propelled, or

(B) transports fungible goods that are not packaged in any form.

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.

(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7).

(e)(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers.

(2) This subsection shall not apply with respect to any airport to which section 236(c) of the Trade and Tariff Act of 1984 (19 U.S.C. 58b(c)) applies.

(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any provision of law—

(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places.

(4) Notwithstanding any other provision of law, all customs services (including, but not limited to normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving departing or transiting the United States;

(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

(5) For purposes of this subsection, customs services shall be treated as being "adequately provided" if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

(A) the unavoidability of weather, mechanical, and other delays;

(B) the necessity for prompt and efficient passenger and baggage clearance;

(C) the perishability of cargo;

(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

(F) the need for specific enforcement checks.

(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

(A) for any—

(i) cargo inspection, clearance, or other customs, activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

(C) in connection with—

(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations.

(2) All funds in the Customs User Fee Account shall be available, to the extent provided for appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commercial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

(3) The Secretary of the Treasury, in accordance with such section 524 and without regard to appointment or any other administrative practice or limitation, shall directly reimburse, from the fees collected under subsection (a), each appropriation, for the amount paid out of that appropriation for the costs incurred by the Secretary in providing—

(A) inspectional overtime services; and

(B) all preclearance services;

for which the recipients of such services are not required to reimburse the Secretary of the Treasury. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly. To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbusements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(g) REGULATIONS.—(1) In addition to the regulations required under paragraph (2), the Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

(B) the work shifts will not be arbitrarily reduced or compressed; and;

(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.

(h) CONFORMING AMENDMENTS.—(1) Subsection (i) of section 305 of the Rail Passenger Service Act (45 U.S.C. 545(i)) is amended by striking out the last sentence thereof.

(2) Subsection (e) of section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741(e)) is repealed. [See section 1893(f) of the Tax Reform Act of 1986 (P.L. 99-514).]

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a), nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

(3) Fees may not be charged under subsection (a) after September 30, 1990.

Section 236 of Trade and Tariff Act of 1984, as amended

[19 U.S.C. 58b; P.L. 98-573, as amended by P.L. 99-190 and P.L. 99-272]

SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, and

(2) any other airport designated by the Secretary of the Treasury under subsection (c).

(b) The fee which is charged under subsection (a) shall be paid by each person using the customs services at the airport and shall be in an amount equal to the expenses incurred by the Secretary of the Treasury in providing the customs services which are rendered to such person at such airport (including the salary and expenses of individuals employed by the Secretary of the Treasury to provide such customs services).

(c) The Secretary of the Treasury may designate 20 airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

(d) Any person who, after notice and demand for payment of any fee charged under subsection (a), fails to pay such fee shall be guilty of a misdemeanor and if convicted thereof shall pay a fine that does not exceed an amount equal to 200 percent of such fee.

(e) Fees collected by the Secretary of the Treasury under subsection (a) with respect to the provision of services at an airport shall be deposited in an account within the Treasury of the United States that is specially designated for such airport. The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in providing customs services at such airport (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.

Section 1893 (c)(2), (3), (f), and (g) of Tax Reform Act of 1986, as amended

[19 U.S.C. 58c nt; P.L. 99-514, as amended by P.L. 100-203]

(c)(2) Notwithstanding section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(7)), the fee imposed by section 13031(a) of such Act with respect to each customs broker permit held by an individual, partnership, association, or corporate customs broker for calendar year 1986 is $62.50.

(3)(A) The Secretary of the Treasury shall reinstate any customs broker's license or customs broker permit issued under subsection (b) or (c) of section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) that was suspended or revoked on or before the date of enactment of this Act solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(B) Notwithstanding any other provision of law, the Secretary of the Treasury may not suspend or revoke any customs broker permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)) solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 before the date that is 60 days after the date of enactment of this Act.

(f) REINSTATING LIMIT ON CHARGES FOR OTHER INSPECTION SERVICES.—Section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741), as amended by section 13031(h)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is further amended by adding at the end thereof the following new subsection:

"(e)(1) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine, service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

"(2) Nothing in this subsection may be construed as requiring reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

(g) EFFECTIVE DATE; REFUNDS.—

(1) The amendments made by this section shall apply with respect to services rendered after the date that is 15 days after the date of enactment of this Act.

(2) Upon written request filed by any person with the Secretary of the Treasury (hereafter in this subsection referred to as the "Secretary") before the date that is 90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 which is accompanied by such documentation establishing proof of payment as the Secretary may require, the Secretary shall refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person an amount equal to the excess of—

(A) the amount of fees imposed by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 that were paid by such person to the Secretary with respect to customs services provided—

(i) after July 6, 1986, and

(ii) on or before the date that is 15 days after the date of enactment of this Act, over

(B) the amount of fees such person would have been required to pay to the Secretary by reason of such section with respect to such services if the amendments made by subsection (a)(1) and (b) applied with respect to such services.

(3) If the customs broker permit fee paid by any person for calendar year 1986 under section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 exceeds $62.50, the Secretary shall either—

(A) refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person the amount of the excess, or

(B) if requested by such person, credit the amount of the excess to the fee due under such section 13031(a)(7) with respect to such permit for calendar year 1987.

G. OTHER CUSTOMS LAWS

1. Country of Origin Marking

Section 304 of Tariff Act of 1930, as amended

[19 U.S.C. 1304; P.L. 71-361, as amended by P.L. 98-573, P.L. 99-514, and P.L. 100-418]

SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) MARKING OF ARTICLES.—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin or any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided,* That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C., 1934 edition, title 19, sections 1351, 1352, 1353, 1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in mold lettering, etching, or engraving.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the four methods specified in paragraph (1), the article may be marked by an equally perma-

nent method of marking such as paint stenciling or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) Marking of Compressed Gas Cylinders.—No exception may be made under subsection (a)(3) with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of Certain Manhole Rings or Frames, Covers and Assemblies Thereof.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

(f) Additional Duties for Failure to Mark.—If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(g) Delivery Withheld Until Marked.—No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (f) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(h) Penalties.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

[Section 1907(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 makes paragraph (1) of section 304(h) applicable to acts committed on or after the date of enactment of that Act, and provides that the conviction of a person under section 304(h) for an act committed before such date of enactment shall be disregarded for purposes of applying paragraph (2) of section 304(h).]

Section 1907 (b) and (c) of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 1304; P.L. 100-418]

(b) MARKING OF CONTAINERS OF IMPORTED MUSHROOMS.—Imported preserved mushrooms shall not be considered to be in compliance with section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or any other law relating to the marking of imported articles unless the containers thereof indicate in English the country in which the mushrooms were grown.

(c) NATIVE-AMERICAN STYLE JEWELRY AND NATIVE-AMERICAN STYLE ARTS AND CRAFTS.—By no later than the date that is 1 year after the date of enactment of this Act, the Secretary of the Treasury shall prescribe and implement regulations under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) which require, to the greatest extent possible, that all Native-American style jewelry and Native-American style arts and crafts that are imported into the United States have the English name of the country of origin of such jewelry or arts and crafts indelibly marked in a conspicuous place on such jewelry or arts and crafts by a permanent method of marking.

2. Drawback

Section 313 of Tariff Act of 1930, as amended

[19 U.S.C. 1313; P.L. 71-361, as amended by Act of June 26, 1936; Act of Aug. 8, 1951; Act of Aug. 8, 1953; Act of Aug. 6, 1956; P.L. 85-673; P.L. 90-630; P.L. 91-692; P.L. 96-609; P.L. 98-573; P.L. 99-514 and P.L. 100-449]

SEC. 313. DRAWBACK AND REFUNDS.

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after ninety days after June 17, 1930. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.—If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.

(d) FLAVORING EXTRACTS; MEDICINAL OR TOILET PREPARATIONS; BOTTLED DISTILLED SPIRITS AND WINES.—Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) IMPORTED SALT FOR CURING FISH.—Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) EXPORTATION OF MEATS CURED WITH IMPORTED FISH.—Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

(g) MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS BUILT FOR FOREIGNERS.—The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such such vessels may not within the strict meaning of the term be articles exported.

(h) JET AIRCRAFT ENGINES.—Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than $100.

(i) TIME LIMITATION ON EXPORTATION.—No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

(j) SAME CONDITION DRAWBACK.—(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the three-year period beginning on the date of importation—

(i) exported in the same condition as when imported, or

(ii) destroyed under Customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.

(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that—

(A) is fungible with such imported merchandise;

(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of the party claiming drawback under this paragraph; and

(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation;

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, of fee imposed under Federal law on the importation of such material.

(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or,

(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies,

that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(k) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

(m) SOURCE OF PAYMENT.—Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n) For purposes of subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, to Canada of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act of 1988 does not constitute an exportation.

(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

3. Copyrights and Trademark Enforcement

Section 101 of Copyright Revision Act of 1976

[17 U.S.C. 602; P.L. 94-553]

SEC. 602. INFRINGING IMPORTATION OF COPIES OR PHONORECORDS.

(a) Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to—

(1) importation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(2) importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(3) importation by or for any organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of any audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies of phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

Section 526 of Tariff Act of 1930, as amended

[19 U.S.C. 1526; P.L. 71-361, as amended by P.L. 93-596 and P.L. 95-410]

SEC. 526. MERCHANDISE BEARING AMERICAN TRADEMARK.

(a) IMPORTATION PROHIBITED.—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trademark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent and Trademark Office by a person domiciled in the United States, under the provisions of sections 81 to 109 of Title 15, and if a copy of the certificate of registration of such trademark is filed with the Secretary of the Treasury, in the manner provided in 15 U.S.C. 106, unless written consent of the owner of such trademark is produced at the time of making entry.

(b) Seizure and Forfeiture.—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) Injunction and Damages.—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trademark and shall be liable for the same damages and profits provided for wrongful use of a trademark, under the provisions of sections 81 to 109 of Title 15.

(d) Exemptions; Publications in Federal Register; Forfeiture; Rules and Regulations.—

(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trademarked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trademark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent ~~is not~~ subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Merchandise Bearing Counterfeit Mark; Seizure and Forfeiture; Disposition of Seized Goods.—Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,

(3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

(4) if the merchandise is unsafe or a hazard to health, by destruction.

4. Penalties

Section 592 of Tariff Act of 1930, as amended

[19 U.S.C. 1592; P.L. 71-361, as amended by Act of Aug. 5, 1935, P.L. 95-410, and P.L. 96-417]

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(1) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document, written or oral statement, or act which is material and false,

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct.

(b) PROCEDURES.—

(1) PRE-PENALTY NOTICE.—

(A) IN GENERAL.—If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the appropriate customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(5) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a writ-

ten statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties as a result of a violation of subsection (a) the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

5. Commercial Operations

Section 9503(c) of Omnibus Budget Reconciliation Act of 1987

[19 U.S.C. 2071; P.L. 100-203]

(c) ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The Secretary of the Treasury shall establish an advisory committee which shall be known as the "Advisory Committee on Commercial Operations of the United States Customs Service" (hereafter in this subsection referred to as the "Advisory Committee").

(2)(A) The Advisory Committee shall consist of 20 members appointed by the Secretary of the Treasury.

(B) In making appointments under subparagraph (A), the Secretary of the Treasury shall ensure that—

(i) the membership of the Advisory Committee is representative of the individuals and firms affected by the commercial operations of the United States Customs Service; and

(ii) a majority of the members of the Advisory Committee do not belong to the same political party.

(3) The Advisory Committee shall—

(A) provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service; and

(B) submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that shall—

(i) describe the operations of the Advisory Committee during the preceding year, and

(ii) set forth any recommendations of the Advisory Committee regarding the commercial operations of the United States Customs Service.

(4) The Assistant Secretary of the Treasury for Enforcement shall preside over meetings of the Advisory Committee.

Section 9501(c) of Omnibus Budget Reconciliation Act of 1987

[19 U.S.C. 3 note; P.L. 100-203]

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter in this subsection referred to as the "Committees") not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act, establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume such operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than that which was in effect immediately before the suspension took effect.

Section 301 of Customs Procedural Reform and Simplification Act of 1975, as amended

[19 U.S.C. 2075; P.L. 95-410, as amended by P.L. 97-456, P.L. 98-573, P.L. 99-272, P.L. 99-509, P.L. 100-203, and P.L. 100-690]

CUSTOMS SERVICE APPROPRIATIONS AUTHORIZATION.

(a) IN GENERAL.—

(1) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for the United States Customs Service only such sums as may hereafter be authorized by law.

(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1989 not to exceed $440,504,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which at least $26,240,000 shall be used to increase the number of customs inspectors for contraband enforcement teams and other drug interdiction personnel of the United States Customs Service to a number which exceeds the total number of such inspectors and personnel employed by the United States Customs Service on September 30, 1988, by the equivalent of at least 435 full-time employees, and for related equipment.

(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year 1989 not to exceed $615,247,000 from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year 1989 not to exceed $142,262,000 for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.

(4) CUSTOMS COOPERATION COUNCIL.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 1989, $1,600,000 for payment to the Customs Cooperation Council.

(c) MANDATORY 10-DAY DEFERMENT.—No part of any sum that is appropriated under the authority of subsection (b) of this section may be used to implement any procedure relating to the time of collection of estimated duties that shortens the maximum 10-day deferment procedure in effect on January 1, 1981.

(d) Overtime Pay Limitations; Waiver.—No part of any sum that is appropriated under subsection (b) of this section for fiscal years after September 30, 1984, may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

(e) Pay Comparability Authorization.—For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for salaries of the United States Customs Service such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970 [5 U.S.C.A. § 5301 et seq.].

(f) If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

(g)(1) The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs personnel assigned to the headquarters office of any Customs district designated by statute before April 7, 1986. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.

(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

(A) result in any significant reduction in force of employees other than by means of attrition;

(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry;

(C) eliminate or relocate any office of the United States Customs Service;

(D) eliminate any port of entry; or

(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.

(3) The total number of employees of the United States Customs Service shall be equivalent to at least 17,174 full-time employees.

H. FOREIGN TRADE ZONES

Act of June 18, 1934, as amended

[19 U.S.C. 81a–u; Act of June 18, 1934, as amended, Act of June 17, 1950, P.L. 85-791, P.L. 91-271, P.L. 96-609, P.L. 98-573, P.L. 99-514, P.L. 100-449, and P.L. 100-647]

SECTION 1. DEFINITIONS.

When used in this chapter—

(a) The term "Secretary" means the Secretary of Commerce;

(b) The term "Board" means the Board which is established to carry out the provisions of this chapter. The Board shall consist of the Secretary of Commerce, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, and the Secretary of the Army;

(c) The term "State" includes any State, the District of Columbia, Alaska, Hawaii, and Puerto Rico;

(d) The term "corporation" means a public corporation and a private corporation, as defined in this chapter;

(e) The term "public corporation" means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term "private corporation" means any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after June 18, 1934, of the State or States within which it is to operate such zone;

(g) The term "applicant" means a corporation applying for the right to establish, operate, and maintain a foreign-trade zone;

(h) The term "grantee" means a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted;

(i) The term "zone" means a "foreign-trade zone" as provided in this chapter.

SEC. 2. ESTABLISHMENT OF ZONES.

(a) BOARD AUTHORIZATION TO GRANT ZONES.—The Board is authorized, subject to the conditions and restrictions of this chapter and of the rules and regulations made thereunder, upon application as hereinafter provided, to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States.

(b) NUMBER OF ZONES PER PORT OF ENTRY.—Each port of entry shall be entitled to at least one zone, but when a port of entry is located within the confines of more than one State such port of entry shall be entitled to a zone in each of such States, and when two cities separated by water are embraced in one port of entry, a zone may be authorized in each of said cities or in territory adjacent thereto. Zones in addition to those to which a port of entry is entitled shall be authorized only if the Board finds that existing or authorized zones will not adequately serve the convenience of commerce.

(c) PREFERENCE TO PUBLIC CORPORATION.—In granting applications preference shall be given to public corporations.

(d) OWNERSHIP OF HARBOR FACILITIES BY STATE.—In case of any State in which harbor facilities of any port of entry are owned and controlled by the State and in which State harbor facilities of any other port of entry are owned and controlled by a municipality, the Board shall not grant an application by any public corporation for the establishment of any zone in such State, unless such application has been authorized by an Act of the legislature of such State (enacted after June 18, 1934).

SEC. 3. ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE.

(a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24 chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise the identify of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned: *Provided, further,* That with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.

(b) The exemption from the customs laws of the United States provided under subsection (a) shall not be available before June 30, 1986, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(c) Notwithstanding the provisions of the fifth proviso of subsection (a), any article (within the meaning of section 5002(a)(14) of the Internal Revenue Code of 1986) may be manufactured or produced from domestic denatured distilled spirits, and articles thereof, in a zone.

(d) In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.

SEC. 4. CUSTOMS OFFICERS AND GUARDS.

The Secretary of the Treasury shall assign to the zone the necessary customs officers and guards to protect the revenue and to provide for the admission of foreign merchandise into customs territory.

SEC. 5. VESSELS ENTERING OR LEAVING ZONE; COASTWISE TRADE.

Vessels entering or leaving a zone shall be subject to the operation of all the laws of the United States, except as otherwise provided in this chapter, and vessels leaving a zone and arriving in customs territory of the United States shall be subject to such regulations to protect the revenue as may be prescribed by the Secretary of the Treasury. Nothing in this chapter shall be construed in any manner so as to permit vessels under foreign flags to carry goods or merchandise shipped from one foreign trade zone to another zone or port in the protected coastwise trade of the United States.

SEC. 6. APPLICATION FOR ESTABLISHMENT OF ZONE; EXPANSION OF ZONE.

(a) Application for Establishment; Requirements.—Each application shall state in detail—

(1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;

(2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;

(3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;

(4) The methods proposed to finance the undertaking;

(5) Such other information as the Board may require.

(b) Amendment of Application; Expansion of Zone.—The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the same manner as an original application.

SEC. 7. GRANTING OF APPLICATION.

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

SEC. 8. RULES AND REGULATIONS.

The Board shall prescribe such rules and regulations not inconsistent with the provisions of this chapter or the rules and regulations of the Secretary of the Treasury made hereunder and as may be necessary to carry out this chapter.

SEC. 9. COOPERATION OF BOARD WITH OTHER AGENCIES.

The Board shall cooperate with the State, subdivision, and municipality in which the zone is located in the exercise of their police, santiary, and other powers in and in connection with the free zone. It shall also cooperate with the United States Customs Service, the United States Postal Service, the Public Health Service, the Immigration and Naturalization Service, and such other Federal agencies as have jurisdiction in ports of entry described in section 81b of this title.

SEC. 10. COOPERATION OF OTHER AGENCIES WITH BOARD.

For the purpose of facilitating the investigations of the Board and its work in the granting of the privilege, in the establishment, operation, and maintenance of a zone, the President may direct the executive departments and other establishments of the Government to cooperate with the Board, and for such purpose each of the several departments and establishments is authorized, upon direction of the President, to furnish to the Board such records, papers, and information in their possession as may be required by him, and temporarily to detail to the service of the Board such officers, experts, or engineers as may be necessary.

SEC. 11. AGREEMENTS AS TO USE OF PROPERTY.

If the title to or the right of user of any of the property to be included in a zone is in the United States, an agreement to use such property for zone purposes may be entered into between the grantee and the department or officer of the United States having control of the same, under such conditions approved by the Board and such department or officer, as may be agreed upon.

SEC. 12. FACILITIES TO BE PROVIDED AND MAINTAINED.

Each grantee shall provide and maintain in connection with the zone—

(a) Adequate slips, docks, wharves, warehouses, loading and unloading and mooring facilities where the zone is adjacent to water; or, in the case of an inland zone, adequate loading, unloading, and warehouse facilities;

(b) Adequate transportation connections with the surrounding territory and with all parts of the United States, so arranged as to permit of proper guarding and inspection for the protection of the revenue;

(c) Adequate facilities for coal or other fuel and for light and power;

(d) Adequate water and sewer mains;

(e) Adequate quarters and facilities for the officers and employees of the United States, State, and municipality whose duties may require their presence within the zone;

(f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise;

(g) Such other facilities as may be required by the Board.

SEC. 13. PERMISSION TO OTHERS TO USE ZONE.

The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations, or associations to erect such buildings and other structures within the zone as will meet their particular requirements: *Provided,* That such permission shall not constitute a vested right as against the United States nor interfere with the regulation of the grantee or the permittee by the United States, nor interfere with or complicate the revocation of the grant by the United States: *And provided further,* That in the event of the United States or the grantee desiring to acquire the property of the permittee no good will shall be considered as accruing from the privilege granted to the zone: *And provided further,* That such permits shall not be granted on terms that conflict with the public use of the zone as set forth in this chapter.

SEC. 14. OPERATION OF ZONE AS PUBLIC UTILITY; COST OF CUSTOMS SERVICE.

Each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable, and the grantee shall afford to all who may apply for the use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may hereafter be made from time to time by the United States with foreign governments and the cost of maintaining the additional customs service required under this chapter shall be paid by the operator of the zone.

SEC. 15. RESIDENTS OF ZONE.

(a) PERSONS ALLOWED TO RESIDE IN ZONE.—No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary to the Board.

(b) RULES AND REGULATIONS FOR EMPLOYEES ENTERING AND LEAVING ZONE.—The Board shall prescribe rules and regulations regarding employees and other persons entering and leaving the zone. All rules and regulations concerning the protection of the revenue shall be approved by the Secretary of the Treasury.

(c) EXCLUSION FROM ZONE OF GOODS OR PROCESS OF TREATMENT.—The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.

(d) RETAIL TRADE WITHIN ZONE.—No retail trade shall be conducted within the zone except under permits issued by the grantee and approved by the Board. Such permittees shall sell no goods except such domestic or duty-paid or duty-free goods as are brought into the zone from customs territory.

(e) Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

SEC. 16. ACCOUNTS AND RECORDKEEPING.

(a) MANNER OF KEEPING ACCOUNTS.—The form and manner of keeping the accounts of each zone shall be prescribed by the Board.

(b) ANNUAL REPORT BY GRANTEE.—Each grantee shall make to the Board annually, and at such other times as it may prescribe, reports on zone operations.

(c) REPORT TO CONGRESS.—The Board shall make a report to Congress annually containing a summary of zone operations.

SEC. 17. TRANSFER OF GRANT.

The grant shall not be sold, conveyed, transferred, set over, or assigned.

SEC. 18. REVOCATION OF GRANTS.

(a) PROCEDURE FOR REVOCATION.—In the event of repeated willful violations of any of the provisions of this chapter by the grantee, the Board may revoke the grant after four months notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon.

(b) Attendance of Witnesses and Production of Evidence.—In the conduct of any proceeding under this section for the revocation of a grant the Board may compel the attendance of witnesses and the giving of testimony and the production of documentary evidence, and for such purpose may invoke the aid of the district courts of the United States.

(c) Nature of Order of Revocation; Appeal.—An order under the provisions of this section revoking the grant issued by the Board shall be final and conclusive, unless within ninety days after its service the grantee appeals to the court of appeals for the circuit in which the zone is located by filing with the clerk of said court a written petition praying that the order of the Board be set aside. Such order shall be stayed pending the disposition of appellate proceedings by the court. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section. [illegible] provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in the case.

SEC. 19. OFFENSES.

In case of a violation of this chapter, or any regulation under this chapter, by the grantee, any officer, agent or employee thereof responsible for or permitting any such violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues shall constitute a separate offense.

SEC. 20. SEPARABILITY OF PROVISIONS.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 21. RIGHT TO ALTER, AMEND, OR REPEAL CHAPTER.

The right to alter, amend, or repeal this chapter is reserved.

I. IMPLEMENTATION OF THE GATT AGREEMENT ON TRADE IN CIVIL AIRCRAFT

Title VI of Trade Agreements Act of 1979

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 96-39]

SEC. 601. CIVIL AIRCRAFT AND PARTS.

(a) GENERAL.—When the conditions under section 2(b) of this Act on acceptance of the Agreement on Trade in Civil Aircraft are fulfilled, the President may proclaim after September 30, 1979, the changes provided for under the following amendments:

(1) The headnotes to schedule 6, part 6, subpart C of the Tariff Schedules of the United States are amended by inserting the following new headnote:

[Text of headnote 3, part 6C, Schedule 6.]

(2) A duty rate of "Free" in rate column numbered 1 of the Tariff Schedules of the United States for those articles classified in the following items which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States:

518.51
544.41
642.20
647.03
647.05
652.09
653.39
653.94
660.44
660.46
660.52
660.54
660.85
660.97
661.10
661.12
661.15
661.20
661.35
661.90
661.95
662.50
664.10
676.15
676.30
678.50
680.47
680.50
680.55
680.56
682.07
682.40
682.60
683.60
684.30
684.40
684.50
684.70
685.24
685.29
685.40
685.60
685.70
686.22
686.24
686.60
688.12
688.40
694.15
694.20
694.40
694.60
709.45
710.08
710.14
710.16
710.30
710.46
711.36
711.37
711.82
711.84
711.98
712.05
712.47
712.49
715.15
720.08
727.47
727.48
727.55
745.45
772.45
772.65.

(3) Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection:

"(f) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of headnote 3 to Schedule 6, part 6, subpart C of the Tariff Schedules of the United States.".

(b) Termination and Withdrawal.—For purposes of section 125 of the Trade Act of 1974, the amendments made under subsection (a), if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

Section 234 of Trade and Tariff Act of 1984

[19 U.S.C. 1202, 19 U.S.C. 2135; P.L. 98–573]

SEC. 234. MODIFICATION OF DUTIES ON CERTAIN ARTICLES USED IN CIVIL AVIATION.

(a) The President may proclaim modifications in the rate of duty column numbered 1 and in the article descriptions, including the superior headings thereto, for the articles provided for in the following items in the Tariff Schedules of the United States (19 U.S.C. 1202) in order to provide duty-free coverage comparable to the expanded coverage provided by all other signatories to the Agreement on Trade in Civil Aircraft pursuant to the extension of the Annex to the Agreement on Trade in Civil Aircraft on October 6, 1983, and recorded in the decision of the Committee on March 22, 1984, if such articles are certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of such Schedules:

646.95
660.85
660.97
661.06
661.10
661.15
661.20
661.35
680.59
680.61
680.62
680.92
680.95
681.01
681.15
681.18
681.21
681.24
682.05
683.05
683.07
683.15
708.01
708.03
708.05
708.07
708.09
708.21
708.23
708.25
708.27
708.29
711.77
711.78
711.98
711.49

(b) For purposes of section 125 of the Trade Act of 1974, the duty-free treatment, if any, proclaimed under subsection (a) shall be considered to be trade agreement obligations entered into under the Trade Act of 1974 of benefit to foreign countries or instrumentalities.

General Note 3(c)(iv) of Harmonized Tariff Schedule

Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft

Whenever a product is entered under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn, the importer shall file a written statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, with the appropriate customs officer stating that the imported article has been imported for use in civil aircraft, that it will be so used and that the article has been approved for such use by the Administrator of the Federal Aviation Authority (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the FAA. For purposes of the tariff schedule, the term *"civil aircraft"* means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.

Chapter 9: TRADE REMEDY LAWS

A. AUTHORITIES TO RESPOND TO FOREIGN SUBSIDY AND DUMPING PRACTICES

1. Countervailing Duties

Section 303 of the Tariff Act of 1930, as amended

[19 U.S.C. 1303; P.L. 71-361, as amended by P.L. 93-618, P.L. 96-6, and P.L. 96-39]

SEC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) Except in the case of an article or merchandise which is the product of a country under the Agreement (within the meaning of section 701(b) of this Act), whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

(2) In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under title VII; except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

(b) REGULATIONS PRESCRIBED BY ADMINISTERING AUTHORITY; IMPORTED ARTICLES ON MERCHANDISE WHICH ARE NOT DUTY FREE.—The duty imposed under subsection (a) shall be imposed, under regulations prescribed by the administering authority (as defined in section 771(1)), in accordance with title VII of this Act (relating to the imposition of countervailing duties) except that, in the case of any imported article or merchandise which is not free of duty—

(1) no determination by the United States International Trade Commission under section 703(a), 704, or 705(b) shall be required.

(2) an investigation may not be suspended under section 704(c),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705 (a)(2) or (b)(4)(A), and

(4) any reference to determinations by the Commission, or to the suspension of an investigation under section 704(c) which are not permitted or required by this subsection shall be disregarded.

[(c) REPEALED.—]

(d) TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROGRESS.—(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that—

(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations;

the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period. This paragraph shall not apply with respect to any case involving non-rubber footwear pending on the date of the enactment of the Trade Act of 1974 until and unless agreements which temporize imports of non-rubber footwear become effective.

(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

(4)(A) The four-year period referred to in paragraph (2) is extended from January 2, 1979, until whichever of the following dates first occurs:

(i) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(ii) The date of the enactment of such implementing legislation.

(iii) September 30, 1979.

(B) Any determination made by the Secretary under this subsection with respect to merchandise of a country which, if title VII of the Tariff Act of 1930 were in effect, would, as determined by the President, be a country under the Agreement (within the meaning of section 701(b) of such Act), which is in effect on September 29, 1979, or on the day before the date of the enactment of the Trade Agreements Act of 1979 (whichever of such dates first occurs), shall remain in effect until whichever of the following dates first occurs:

(i) The date on which the United States International Trade Commission makes a determination under section 104 of the Trade Agreements Act of 1979.

(ii) The date such determination is revoked under paragraph (3).

(iii) The date of adoption of a resolution of disapproval of such determination under subsection (e)(2).

(e) REPORTS TO CONGRESS.—(1) Whenever the Secretary makes a determination under subsection (d)(2) with respect to any article or merchandise, he shall promptly transmit to the House of Representatives and the Senate a document setting forth the determination, together with his reasons therefor.

(2) If, at any time after the document referred to in paragraph (1) is delivered to the House of Representatives and the Senate, either the House or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval under the procedures set forth in section 152 of the Trade Act of 1974, then such determination under subsection (d)(2) with respect to such article or merchandise shall have no force or effect beginning with the day after the date of the adoption of such resolution of disapproval, and the additional duty provided under this section with respect to such article or merchandise shall apply with respect to articles or merchandise entered, or withdrawn from warehouse, for consumption on or after such day.

(f) CROSS REFERENCE.—For provisions of law applicable in the case of articles and merchandise which are the product of countries under the Agreement within the meaning of section 701(b) of this Act, see title VII of this Act.

Section 331(d)(3) of the Trade Act of 1974

[19 U.S.C. 1303 note; P.L. 93-618]

SEC. 331(d)(3). Any article which is entered or withdrawn from warehouse free of duty as a result of action taken under title V of this Act shall be considered a nondutiable article for purposes of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Transition Rules: Sections 102 and 104 of Trade Agreements Act of 1979

[19 U.S.C. 1671 note; P.L. 96-39]

SEC. 102. PENDING INVESTIGATIONS.

(a) PENDING INVESTIGATIONS OF BOUNTIES OR GRANTS.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, there is an investigation in progress under section 303 of that Act as to whether a bounty or grant is being paid or bestowed on imports from such country, then:

(1) If the Secretary of the Treasury has not yet made a preliminary determination under section 303 of that Act as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under section 303 and the matter previously under investigation shall be subject to this title as if the affirmative determination called for in section 702 of that Act were made with respect to that matter on the effective date of the application of title VII of that Act to such country.

(2) If the Secretary has made a preliminary determination under such section 303, but not a final determination, as to whether a bounty or grant is being paid or bestowed, he shall terminate the investigation under such section 303 and the matter previously under investigation shall be subject to the provisions of title VII of that Act as if the preliminary determination under section 303 were a preliminary determination under section 703 of that title made on the effective date of the application of that title to such country.

(b) PENDING INVESTIGATIONS OF LESS-THAN-FAIR-VALUE SALES.—If, on the effective date of title VII of the Tariff Act of 1930, there is an investigation in progress under the Antidumping Act, 1921, as to whether imports from a country are being, or are likely to be, sold in the United States or elsewhere at less than fair value, then:

(1) If the Secretary has not yet made a preliminary determination under the Antidumping Act, 1921, as to the question of less-than-fair value sales, he shall terminate the investigation and the United States International Trade Commission shall terminate any investigation under section 201(c)(2) of the Antidumping Act, 1921, and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the affirmative determination called for in section 732 were made with respect to such matter on the effective date of title VII of the Tariff Act of 1930.

(2) If the Secretary has made under the Antidumping Act, 1921, a preliminary determination, but not a final determination, that imports from such country are being or are likely to be sold in the United States or elsewhere at less than fair value, the investigation shall be terminated and the matter previously under investigation shall be subject to the provisions of title VII of the Tariff Act of 1930 as if the preliminary determination under the Antidumping Act, 1921, were a preliminary determination under section 733 of that title made on the effective date of title VII of the Tariff Act of 1930.

(c) PENDING INVESTIGATIONS OF INJURY.—If, on the effective date of the application of title VII of the Tariff Act of 1930 to imports from a country, the United States International Trade Commission is conducting an investigation under section 303 of the Tariff Act of 1930 or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation, under subtitle A or B of title VII of the Tariff Act of 1930, which shall be completed within 75 days and—

(1) treat any final determination of the Secretary of the Treasury under section 303 as a final determination under section 705(a) of the Tariff Act of 1930 and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under subtitle A of that title; and

(2) treat any final determination of the Secretary of the Treasury under the Antidumping Act, 1921, as a final determination under section 735(a) of the Tariff Act of 1930.

SEC. 104. TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS.

(a) WAIVED COUNTERVAILING DUTY ORDERS.—

(1) NOTIFICATION OF COMMISSION.—The administering authority shall notify the United States International Trade Commission by January 7, 1980, of any countervailing duty order in effect on January 1, 1980—

(A)(i) for which the Secretary of the Treasury has waived the imposition of countervailing duties under section 303(d) of the Tariff Act of 1930 (19 U.S.C. 1303(d)), and

(ii) which applies to merchandise other than quota cheese (as defined in section 701(c)(1) of this Act), which is a product of a country under the Agreement,

(B) published on or after the date of the enactment of this Act, and before January 1, 1980, with respect to products of a country under the Agreement (as defined in section 701(b) of the Tariff Act of 1930), or

(C) applicable to frozen, boneless beef from the European Communities under Treasury Decision 76-109,

and shall furnish to the Commission the most current information it has with respect to the net subsidy benefitting the merchandise subject to the countervailing duty order.

(2) DETERMINATION BY THE COMMISSION.—Within 180 days after the date on which it receives the information from the administering authority under paragraph (1), the Commission shall make a determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise subject to the order.

(3) EFFECT OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission of an affirmative determination under paragraph (2), the administering authority shall terminate the waiver of imposition of countervailing duties for merchandise subject to the order, if any. The countervailing duty order under section 303 of the Tariff Act of 1930 which applies to that merchandise shall remain in effect until revoked, in whole or in part, under section 751(d) of such Act.

(B) Negative determination.—Upon being notified by the Commission of a negative determination under paragraph (2) the administering authority shall revoke the countervailing duty order, and publish notice in the Federal Register of the revocation.

(b) Other Countervailing Duty Orders.—

(1) Review by commission upon request.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the Agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that Act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) Determination by the commission.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(3) Suspension of liquidation; investigation time limits.—Whenever the Commission receives a request under paragraph (1), it shall promptly notify the administering authority and the administering authority shall suspend liquidation of entries of the affected merchandise made on or after the date of receipt of the Commission's notification, or in the case of butter from Australia, entries of merchandise subject to the assessment of countervailing duties under Treasury Decision 42937, as amended, and collect estimated countervailing duties pending the determination of the Commission. The Commission shall issue its determination in any investigation under

this subsection not later than 3 years after the date of commencement of such investigation.

(4) EFFECTIVE OF DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified of an affirmative determination under paragraph (2) by the Commission, the administering authority shall liquidate entries of merchandise the liquidation of which was suspended under paragraph (3) of this subsection and impose countervailing duties in the amount of the estimated duties required to be deposited. The countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(c) of the Tariff Act of 1930.

(B) NEGATIVE DETERMINATION.—Upon being notified of a negative determination under paragraph (2) by the Commission, the administering authority shall revoke the countervailing duty order then in effect, publish notice thereof in the Federal Register, and refund, without payment of interest, any estimated countervailing duties collected during the period of suspension of liquidation.

(c) ALL OUTSTANDING COUNTERVAILING DUTY ORDERS.—Subject to the provisions of subsections (a) and (b), any countervailing duty order issued under section 303 of the Tariff Act of 1930 which is—

(1) in effect on the effective date of title VII of the Tariff Act of 1930 (as added by section 101 of this Act), or

(2) issued pursuant to court order in a proceeding brought before that date under section 516(d) of the Tariff Act of 1930,

shall remain in effect after that date and shall be subject to review under section 751 of the Tariff Act of 1930.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the Commission makes a determination under subsection (a) or (b), it shall publish notice of that determination in the Federal Register and notify the administering authority of its determination.

(e) DEFINITIONS.—Whenever any term which is defined in section 771 of the Tariff Act of 1930 is used in this section, it has the same meaning as when it is used in title VII of that Act.

Subtitle A of Title VII of the Tariff Act of 1930, as amended

[19 U.S.C. 1671; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-181, P.L. 98-573, P.L. 99-514, P.L. 100-418, and P.L. 100-647]

Subtitle A—Imposition of Countervailing Duties

SEC. 701. COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that—

(A) a country under the Agreement, or

(B) a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country,

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) Country Under the Agreement.—For purposes of this subtitle, the term "country under the Agreement" means a country—

(1) between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on June 19, 1979, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(B) the General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(C) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) Revocation of Status as a Country Under the Agreement.—The United States Trade Representative may revoke the status of a foreign country as a country under the Agreement for purposes of this subtitle if such foreign country—

(1) announces that such foreign country does not intend, or is not able, to honor the obligations it has assumed with respect to the United States or the Agreement for purposes of this subtitle, or

(2) does not in fact honor such obligations.

(d) Treatment of International Consortia.—For purposes of this subtitle, if the members (or other participating entities) of an international consortium that is engaged in the production of a class or kind of merchandise subject to a countervailing duty investigation receive subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such subsidies, as well as subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) UPSTREAM SUBSIDY.—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

(f) CROSS REFERENCE.—For provisions of law applicable in the case of merchandise which is the product of a country other than a country under the Agreement, see section 303 of this Act.

SEC. 702. PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—A countervailing duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) INITIATION BY PETITION.—

(1) PETITIONER REQUIREMENTS.—A countervailing duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.—If the sole basis of a petition filed under subsection 702(b)(1) is the derogation of an international undertaking on official export credits, the administering authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the administering authority, within twenty days determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether a subsidy is being provided with respect to the class or kind of merchandise described in the petition, and provide for the publication of notice of the determination to commence an investigation in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged subsidy is inconsistent with the Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the class or kind of merchandise that is the subject of the investigation. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 705(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 703. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 702(b) or on which it receives notice from the administering authority of an investigation commenced under section 702(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b)(1) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY; EXPEDITED DETERMINATIONS; WAIVER OF VERIFICATION.—Within 85 days after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(2) Notwithstanding subsection (b)(1), when the petition is one subject to section 702(b)(3), the administering authority shall, taking into account the nature of the subsidy concerned, make the determination required by subsection 703(b)(1) on an expedited basis and within 85 days after the date on which the petition is filed under section 702(b) unless the provisions of section 703(c) apply.

(3) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 150th day after the date on which a petition is filed under section 702(b), or an investigation is commenced under section 702(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount of the net subsidy, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more

than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the best information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(g) TIME PERIOD WHERE UPSTREAM SUBSIDIZATION INVOLVED.—

(1) IN GENERAL.—Whenever the administering authority concludes prior to a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or commencement of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) EXCEPTIONS.—Whenever the administering authority concludes, after a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days as appropriate, under section 705(a)(1); or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 751 of any eventual countervailing duty order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1), as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of the determination and not be resumed unless and until the publication of a countervailing duty order under section 706(a).

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) Termination of Investigation Upon Withdrawal of Petition.—

(1) In general.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(2) Special rules for quantitative restriction agreements.—

(A) In general.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A SUBSIDY OR TO CEASE EXPORTS OF SUBSIDIZED MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree—

(1) to eliminate the subsidy completely or to offset completely the amount of the net subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the merchandise which is the subject of the investigation.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the merchandise which is the subject of the investigation into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of merchandise which is the subject of the investigation into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of alleged subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how

the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 703(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 703(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), and (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), and (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under para-

graph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(2).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

SEC. 705. FINAL DETERMINATIONS.

(a) FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of a countervailing duty on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time and will be difficult to repair.

(ii) PREVENTION OF RECURRENCE.—For purposes of making its finding under clause (i), the Commission shall make an evaluation as to whether the effectiveness of the countervailing duty order would be materially impaired if such imposition did not occur.

(iii) EVALUATION OF EFFECTIVENESS.—In making the evaluation under clause (ii), the Commission shall consider, among other factors it considers relevant—

(I) the condition of the domestic industry,

(II) whether massive imports of the merchandise over a relatively short period of time can be accounted for by efforts to avoid the potential imposition of countervailing duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and

(IV) whether the impact of massive imports of the merchandise is likely to continue for some period after issuance of the countervailing duty order under this subtitle.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 703(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 703(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the adminstering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) and was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 703(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(d) Publication of Notice of Determinations.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of Ministerial Errors.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considered ministerial.

SEC. 706. ASSESSMENT OF DUTY.

(a) Publication of Countervailing Duty Order.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net subsidy determined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

(B) a State-owned enterprise is involved, the order may provide for differing countervailing duties,

(3) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(4) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(1), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(1), shall be subject to the imposition of countervailing duties under section 701(a).

(2) SPECIAL RULE.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

SEC. 707. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703(d)(2).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(2) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 708. EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the event of an assessment of duty based on a derogation under section 706 or action under section 703(d)(2), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits of competing United States sellers pursuant to section 1912 of such Act.

SEC. 709. CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.

(a) IN GENERAL.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.

2. Antidumping Duties

Subtitle B of Title VII of the Tariff Act of 1930, as amended

[19 U.S.C. 1673; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-573, P.L. 99-514, P.L. 100-418, and P.L. 100-647]

SEC. 731. ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise. For purposes of this subsection and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

SEC. 732. PROCEDURES FOR INITIATING AN ANTIDUMPING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING PERSISTENT DUMPING.—

(A) MONITORING.—The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to commence a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) EXPEDITIOUS ACTION.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation commenced under subparagraph (B).

(b) INITIATION BY PETITION.—

(1) PETITIONER REQUIREMENTS.—An antidumping duty proceeding shall be commenced whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended

at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(c) PETITION DETERMINATION.—Within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(1) determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations,

(2) if the determination is affirmative, commence an investigation to determine whether the class or kind of merchandise described in the petition is being, or is likely to be, sold in the United States at less than its fair value, and provide for the publication of notice of the determination in the Federal Register, and

(3) if the determination is negative, dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and provide for the publication of notice of the determination in the Federal Register.

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the class or kind of merchandise that is the subject of the investigation. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 733. PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within 45 days after the date on which a petition is filed under section 732(b) or on which it receives notice from the administering authority of an investigation commenced under section 732(a), shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that—

(1) an industry in the United States—

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise which is the subject of the investigation by the administering authority. If that determination is negative, the investigation shall be terminated.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), within 160 days after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value. If the determination of the administering authority under this subsection is affirmative, the determination shall include the estimated amount by which the foreign market value exceeds the United States price.

(B) IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.—If a petition filed under section 732(b), or an investigation commenced under section 732(a), concerns short life cycle merchandise that is included in a product category established under section 739(a), subparagraph (A) shall be applied—

(i) by substituting "120 days" for "160 days" if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting "100 days" for "160 days" if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) DEFINITIONS OF OFFENDERS.—For purposes of subparagraph (B)—

(i) the term "second offender" means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) the term "multiple offender" means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 60 days after the investigation was commenced.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 210th day after the date on which a petition is filed under section 732(b), or an investigation is commenced under section 732(a). No extension of a determinaiton date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the Federal Register,

(2) shall order the posting of a cash deposit, bond, or other security, as it deems appropriate, for each entry of the merchandise concerned equal to the estimated amount by which the foreign market value exceeds the United States price, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to is injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the best

information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(1) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(f) NOTICE OF DETERMINATIONS.—Whenever the Commission or the administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORTS OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the United States price of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) Definition of extraordinary circumstances.—

(A) Extraordinary circumstances.—For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) Complex.—For purposes of this paragraph, the term "complex" means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional Rules and Conditions.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

(e) Suspension of Investigation Procedure.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) Effects of Suspension of Investigation.—

(1) In general.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the merchandise which is the subject of the investigation, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of merchandise which is the subject of the investigation shall not be suspended under section 733(d)(1),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(1).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the merchandise which is the subject of the investigation shall be suspended under section 733(d)(1), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(2) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in subparagraph (C), (D), (E), (F), and (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of Suspension.—

(1) In general.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), and (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the merchandise which is the subject of the investigation is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) Suspension of liquidation to continue during review period.—The suspension of liquidation of entries of the merchandise which is the subject of the investigation shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(1), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(2).

(i) Violation of Agreement.—

(1) In general.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(1) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 733(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the merchandise which is the subject of the investigation, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 732(a) after providing notice of such termination to all parties to the investigation.

(l) SPECIAL RULE FOR NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) FAILURE OF AGREEMENTS.—If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) shall apply.

SEC. 735. FINAL DETERMINATIONS.

(a) FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—Within 75 days after the date of the preliminary determination under section 733(b), the administering authority shall make a final determination of whether the merchandise which is the subject of the investigation is being, or is likely to be, sold in the United States at less than its fair value.

(2) EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding as to whether—

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering

authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time.

(ii) PREVENTION OF RECURRENCE.—For purposes of making its finding under clause (i), the Commission shall make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if such imposition did not occur.

(iii) EVALUATION OF EFFECTIVENESS.—In making the evaluation under clause (ii), the Commission shall consider, among other factors it considers relevant—

(I) the condition of the domestic industry,

(II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties,

(III) whether foreign economic conditions led to the massive imports of the merchandise, and

(IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this subtitle.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority, and

(B) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order under paragraphs (1) and (2) of section 733(d) the suspension of liquidation and the posting of a cash deposit, bond, or other security.

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liqudation under section 733(d)(1), and

(B) release any bond or other security and refund any cash deposit required under section 733(d)(2).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(2) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(3).—If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 733(b) and 733(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 733(b) was affirmative, but the preliminary determination under section

733(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 733(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 735(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

SEC. 736. ASSESSMENT OF DUTY.

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of the merchandise,

(2) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(1), would have led to a finding of material injury, then entries of the merchandise subject to the antidumping duty order, the liquidation of which has been suspended under section 733(d)(1), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to an antidumping duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

(i) the number and complexity of the transactions to be investigated or adjustments to be considered,

(ii) the novelty of the issues presented, or

(iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(i) an affirmative preliminary determination by the adminstering authority under section 733(b), or

(ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); and

(E) the data concerning the foreign market value and the United States price apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the foreign market value and the United States price of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of foreign market value and United States price, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

(4) PROVISION OF BUSINESS PROPRIETARY INFORMATION; WRITTEN COMMENTS.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 777(c) to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 771(9), and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

SEC. 737. TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(2).—If the amount of a cash deposit collected as security for an estimated antidumping duty under section 733(d)(2) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent that the cash deposit collected is lower than the duty under the order, or

(2) refunded, to the extent the cash deposit is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order issued under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order,

together with interest as provided by section 778.

SEC. 738. CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the United States price of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the

time of entry the exporter's sales price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

SEC. 739. ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.

(a) ESTABLISHMENT OF PRODUCT CATEGORIES.—

(1) PETITIONS.—

(A) IN GENERAL.—An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) CONTENTS.—A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Tariff Schedules of the United States.

(2) DETERMINATIONS ON SUFFICIENCY OF PETITION.—Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affirmative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) NOTICE; HEARINGS.—If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) DETERMINATIONS.—

(A) IN GENERAL.—By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) MODIFICATIONS NOT REQUESTED BY PETITION.—

(i) IN GENERAL.—The Commission may, on its own initiative, make a determination modifying the scope of any product category established under subparagraph (A) at any time.

(ii) NOTICE AND HEARING.—Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) BASIS OF DETERMINATIONS.—In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

(b) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE DOMESTIC ENTITY.—The term "eligible domestic entity" means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) AFFIRMATIVE DUMPING DETERMINATION.—The term "affirmative dumping determination" means—

(A) any affirmative final determination made by the administering authority under section 735(a) during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 736 which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 733(b) during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 735 by reason of a suspension of the investigation under section 734, and

(ii) includes a determination that the estimated average amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise is not less than 15 percent ad valorem.

(3) SUBJECT OF AFFIRMATIVE DUMPING DETERMINATION.—

(A) IN GENERAL.—Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the foreign market value of such merchandise of the manufacturer exceeds the United States price of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) EXCLUSION.—Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the foreign market value of the merchandise in such group exceeds the United States price of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) SHORT LIFE CYCLE MERCHANDISE.—That term "short life cycle merchandise" means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term "outmoded" refers to a kind of style that is no longer state-of-the-art.

(c) TRANSITION RULES.—

(1) For purposes of this section and section 733(b)(1) (B) and (C), all affirmative dumping determinations described in subsection (b)(2)(A) that were made after December 31, 1980, and before the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) that were made after December 31, 1984, and before the date of enactment of such Act, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for

that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) and was made before January 1, 1985,

may be taken into account under this section or section 733(b)(1) (B) and (C).

3. Administrative Review of Antidumping and Countervailing Duties

Subtitle C of Title VII of the Tariff Act of 1930, as amended

[19 U.S.C. 1675; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-573 and P.L. 100-418]

CHAPTER 1—REVIEW OF AMOUNTS OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of such review in the Federal Register, shall—

(A) review and determine the amount of any net subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net subsidy or margin of sales at less than fair value involved in the agreement,

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(A) the foreign market value and United States price of each entry or merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

(b) REVIEWS UPON INFORMATION OR REQUEST.—

(1) IN GENERAL.—Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 704 (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 734 (other than a quantitative restriction agreement described in subsection (a)(2)) or an affirmative determination made under section 704(h)(2), 705(a), 705(b), 734(h)(2), 735(a), 735(b), 762(a)(1), or 762(a)(2), which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 704(h)(2) or 734(h)(2), the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 704(c) or 734(c) continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping or countervailing duty order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping or countervailing duty order.

(2) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination under section 705(b) or 735(b), and

(B) the administering authority may not review a determination under section 705(a) or 735(a), or a suspension of an investigation suspended under section 704 or 734,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) REVOCATION OF COUNTERVAILING DUTY ORDER OR ANTIDUMPING DUTY ORDER.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of the merchandise to the United States specifically intended to offset the subsidy received. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

(d) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of an interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(e) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under the last sentence of subsection (b)(1) is negative, the agreement shall be treated as not accepted, beginning on the date of publication of the

Commission's determination, and the administering authority and the Commission shall proceed, under section 704(i) or 734(i), as if the agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(f) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. REQUIRED CONSULTATIONS.

(a) AGREEMENTS IN RESPONSE TO SUBSIDIES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the subsidy completely, or

(2) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) MODIFICATION OF AGREEMENTS ON BASIS OF CONSULTATIONS.—At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a).

(c) SPECIAL RULE REGARDING AGREEMENTS UNDER SECTION 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

SEC. 762. REQUIRED DETERMINATIONS.

(a) IN GENERAL.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the

United States or materially retard the establishment of such an industry.

(b) DETERMINATIONS.—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 for purposes of judicial review under section 516A. If ~~the~~ determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 706 effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of merchandise subject to the order which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) HEARINGS.—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

4. General Provisions Relating to Antidumping and Countervailing Duties

Subtitle D of Title VII of the Tariff Act of 1930, as amended

[19 U.S.C. 1677; P.L. 71-361, as amended by P.L. 96-39, P.L. 98-573, P.L. 100-418, P.L. 100-449, and P.L. 100-647]

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) COUNTRY.—The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product; except that in the case of wine and grape products subject to investigation under this title, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.[1]

(B) RELATED PARTIES.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.

(C) REGIONAL INDUSTRIES.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

(D) PRODUCT LINES.—The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which include a like product, for which the necessary information can be provided.

(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

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[1] As provided in section 626(c) of the Trade and Tariff Act of 1984, the language following the semicolon added by section 612(a)(1) of that Act shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986.

(i) In general.—Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) Processing.—For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) Relevant economic factors.—For purpose of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) Raw agricultural product.—For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

(v) Termination of this subparagraph.—This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) Subsidy.—

(A) In general.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303, and includes, but is not limited to, the following:

(i) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industry, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(I) The provision of capital, loans, or loan guarantees on terms inconsistent with commerical considerations.

(II) The provision of goods or services at preferential rates.

(III) The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

(IV) The assumption of any costs or expenses of manufacture, production, or distribution.

(B) SPECIAL RULE.—In applying subparagraph (A), the administering authority, in each investigation, shall determine whether the bounty, grant, or subsidy in law or in fact is provided to a specific enterprise or industry, or group of enterprises or industries. Nominal general availability, under the terms of the law, regulation, program, or rule establishing a bounty, grant, or subsidy, of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof.

(6) NET SUBSIDY.—For the purpose of determining the net subsidy, the administering authority may substract from the gross subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy,

(B) any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission in each case—

(i) shall consider—

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.

(v) TREATMENT OF NEGLIGIBLE IMPORTS.—The Commission is not required to apply clause (iv) or subparagraph (F)(iv) in any case in which the Commission determines that imports of the merchandise subject to investigation are negligible and have no discernable adverse impact on the domestic industry. For purposes of making such determination, the Commission shall evaluate all relevant economic factors regarding the imports, including, but not limited to, whether—

(I) the volume and market share of the imports are negligible,

(II) sales transactions involving the imports are isolated and sporadic, and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

For purposes of this clause, the Commission may treat as negligible and having no discernible adverse impact on the domestic industry imports that are the product of any country that is a party to a free trade area agreement with the United States which entered into force and effect before January 1, 1987, if the Commission determines that the domestic industry is not being materially injured by reason of such imports.—

(D) SPECIAL RULES FOR AGRICULTURAL PRODUCTS.—

(i) The Commission shall not determine that there is no material injury or threat of material injury to the United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors—

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both)

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.

(ii) BASIS FOR DETERMINATION.—Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

(I) IN GENERAL.—In investigations under subtitle B, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) GATT MEMBER MARKET.—For purposes of this clause, the term "GATT member market" means the market of any country which is a signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

(iv) CUMULATION.—To the extent practicable and subject to subparagraph (C)(v), for purposes of clause (i) (III) and (IV) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports—

(I) compete with each other, and with like products of the domestic industry, in the United States market, and

(II) are subject to any investigation under section 303, 701, or 731.

(8) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES; AGREEMENT.—The terms "Agreement on Subsidies and Countervailing Measures" and "Agreement" mean the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures) approved under section 2(a) of the Trade Agreements Act of 1979.

(9) Interested party.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this title or a trade or business association a majority of the members of which are importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured,

(C) a manufacturer, producer, or wholesaler in the United States of a like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product, and

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) Like product.—The term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) Affirmative determinations by divided commission.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is im-

ported directly from that country and without regard to whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) EXPORTER.—For the purpose of determining United States price, the term "exporter" includes the person by whom or for whose account the merchandise is imported into the United States if—

(A) such person is the agent or principal of the exporter, manufacturer, or producer;

(B) such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer;

(C) the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such person; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 percent or more of such power or control in the business of the exporter, manufacturer, or producer.

(14) SOLD OR, IN THE ABSENCE OF SALES, OFFERED FOR SALE.—The term "sold or, in the absence of sales, offered for sale" means sold, or, in the absence of sales offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) ORDINARY COURSE OF TRADE.—The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

(16) SUCH OR SIMILAR MERCHANDISE.—The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) MERCHANDISE—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) MERCHANDISE—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determine may reasonably be compared with that merchandise.

(17) USUAL COMMERCIAL QUANTITIES.—The term "usual commercial quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(18) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) DETERMINATION IN EFFECT.—

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) Determination not in issue.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle B.

(E) Collection of information.—Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 777.

(18) United states-canada agreement.—The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(19) Equivalency of leases to sales.—In determining whether a lease is equivalent to a sale for purposes of this title, the administering authority shall consider—

(A) the terms of the lease,

(B) commercial practices within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) Application to governmental importations.—

(A) In general.—Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise provided for under schedule 8 of the Tariff Schedules of the United States) is subject to the imposition of countervailing duties or antidumping duties under this title or section 303.

(B) Exceptions.—Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this title if—

(i) the merchandise is acquired by, or for the use of, such Department—

(I) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superseding agreements, and

(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial nonmilitary use.

SEC. 771A. UPSTREAM SUBSIDIES.

(a) DEFINITION.—The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), (iii), or (iv) by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as one country if the subsidy is provided by the customs union.

(b) DETERMINATION OF COMPETITIVE BENEFIT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) ADJUSTMENTS.—If the administering authority has determined in a previous proceeding that a subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the subsidy, or (B) select in lieu of that price a price from another source.

(c) INCLUSION OF AMOUNT OF SUBSIDY.—If the administering authority decides, during the course of a countervailing duty proceeding that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

SEC. 771B. CALCULATION OF SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

SEC. 772. UNITED STATES PRICE.

(a) UNITED STATES PRICE.—For purposes of this title, the term "United States price" means the purchase price, or the exporter's sales price, of the merchandise, whichever is appropriate.

(b) PURCHASE PRICE.—For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

(c) EXPORTER'S SALES PRICE.—For purposes of this section, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

(d) ADJUSTMENTS TO PURCHASE PRICE AND EXPORTER'S SALES PRICE.—The purchase price and the exporter's sales price shall be adjusted by being—

(1) increased by—

(A) when not included in such price, the cost of all containers and covering and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States;

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

(C) the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(D) the amount of any countervailing duty imposed on the merchandise under subtitle A of this title or section 303 of this Act to offset an export subsidy, and

(2) reduced by—

(A) except as provided in paragraph (1)(D), the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(6)(C).

(e) ADDITIONAL ADJUSTMENTS TO EXPORTER'S SALES PRICE.—For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any of—

(1) commissions for selling in the United States the particular merchandise under consideration,

(2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

SEC. 773. FOREIGN MARKET VALUE.

(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—

(1) IN GENERAL.—The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) with respect to such person—

(A) at which such or similar merchandise is sold, or in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purpose of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(2) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the foreign market value of imported merchandise cannot be determined under paragraph (1)(A), then, notwithstanding paragraph (1)(B), the foreign market value of the merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(3) INDIRECT SALES AND OFFERS FOR SALE.—If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13), the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(4) OTHER ADJUSTMENTS.—In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the commercial quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the commercial quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not sold for home consumption, then for exportation to countries other than the United States);

(B) other differences in circumstances of sale; or

(C) the fact that merchandise described in paragraph (B) or (C) of section 771(16) is used in determining foreign market value,

then due allowance shall be made therefor.

(5) FICTITIOUS MARKETS.—The occurrence of different movements in the prices at which different forms of any merchandise subject to an antidumping duty order issued under this title are sold (or, in the absence of sales, offered for sale) after the issuance of such order in the principal markets of the foreign country from which the merchandise is exported may be considered by the administering authority as evidence of the establishment of a fictitious market for the merchandise if the movement in such prices appears to reduce the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise.

(b) SALES AT LESS THAN COST OF PRODUCTION.—Whenever the administering authority has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, *it shall determine whether, in fact, such* sales were made at less than the cost of producing the merchandise. If the administering authority determines that sales made at less than cost of production—

(1) have been made over an extended period of time and in substantial quantities, and

(2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade,

such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a), the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

(A) the merchandise under investigation is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the foreign market value of the merchandise to be determined under subsection (a),

the administering authority shall determine the foreign market value of the merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses, as required by subsection (e). Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market country or countries considered to be appropriate by the administering authority.

(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the foreign market value of merchandise under paragraph (1), the administering authority shall determine the foreign market value on the basis of the price at which merchandise that is—

(A) comparable to the merchandise under investigation, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) Valuation of factors of production.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable merchandise.

(d) Special Rule for Certain Multinational Corporations.—Whenever, in the course of an investigation under this title, the administering authority determines that—

(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and

(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value of such or similar merchandise produced in the facilities located in the country of exportation,

it shall determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in facilities in the country of exportation, if such differences are demonstrated to its satisfaction. For the purposes of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the administering authority shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by subsection (a) of this section for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.

(e) Constructed Value.—

(1) Determination.—For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(A) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade, except that—

(i) the amount for general expenses shall not be less than 10 percent of the cost as defined in subparagraph (A), and

(ii) the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(C) the cost of all containers and covering of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(2) Transactions disregarded; best evidence.—For the purposes of this subsection, a transaction directly or indirectly between persons specified in any of the subparagraphs in paragraph (4) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount annually reflected in sales in the market under consideration of merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to ~~what the~~ amount would have been if the transaction had occurred between persons not specified in any one of the subparagraphs in paragraph (4) of this section.

(3) Special rule.—If, regarding any of transaction between persons specified in any one of the subparagraphs of paragraph (4) involving the production by one of such persons of a major input to the merchandise under consideration, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the costs of production of such input, then the administering authority may determine the value of the major input on the basis of the best evidence available regarding such costs of production, if such costs are greater than the amount that would be determined for such input under paragraph (2).

(4) Related parties.—The persons referred to in paragraphs (2) and (3) of this subsection are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(f) EXPORTATION FROM AN INTERMEDIATE COUNTRY.—If—

(1) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

(2) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

(3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

(4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

(5) the merchandise is subsequently exported to the United States,

such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

SEC. 774. HEARINGS.

(a) INVESTIGATION HEARINGS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.

(2) EXCEPTION.—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted under notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 775. SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.

If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information concerning the practice (other than confidential information) to the library maintained under section 777(a)(1), if the practice appears to be a subsidy with respect to any other merchandise.

SEC. 776. VERIFICATION OF INFORMATION.

(a) Certification of Submissions.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(b) Verification.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 751(c), and

(3) a review and determination under section 751(a), if—

(A) verification is timely requested by an interested party as defined in section 771(9) (C), (D), (E), or (F), and

(B) no verification was made under this paragraph during the 2 immediately preceding reviews and determination under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

In publishing notice of any action referred to in paragraph (1), (2), or (3), the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

(c) Determinations To Be Made on Best Information Available.—In making their determinations under this title, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

SEC. 777. ACCESS TO INFORMATION.

(a) Information Generally Made Available.—

(1) Public information function.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) Progress of investigation reports.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) Ex PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission may disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

(b) PROPRIETARY INFORMATION.—

(1) PROPRIETARY STATUS MAINTAINED.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

(A) either—

(i) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(ii) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(B) either—

(i) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

(ii) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it.

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted, or

(ii) if—

(I) the person submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted.

(D) Availability after determination.—If the determination under subparagraph (C) is affirmative, then

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

(E) Failure to disclose.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) Disclosure under court order.—If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) Disclosure of Proprietary Information Under Protective Orders Issued Pursuant to the United States-Canada Agreement.—

(1) Issuance of protective orders.—

(A) In general.—If binational panel review of a determination under this title is requested pursuant to article 1904 of the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material (but not privileged material as defined by the rules of procedure referred to in article 1904(14) of the United States-Canada Agreement) in the administrative record made during the proceeding in question.

(B) AUTHORIZED PERSONS.—For purposes of this subsection, the term "authorized persons" means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees of such counsel, and

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to implement the United States-Canada Agreement with respect to such proceeding.

(C) REVIEW.—A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) CONTENTS OF PROTECTIVE ORDER.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) PROHIBITED ACTS.—It is unlawful for any person to violate, or to induce the violation of, any provision of a protective order issued under this subsection or to violate, or to induce the violation of, any provision of an undertaking entered into with an authorized agency of Canada to protect proprietary material during binational panel review pursuant to article 1904 of the United States-Canada Agreement.

(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.—Any person who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The

amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation of, or inducement of a violation of, an undertaking entered into by any person with an authorized agency of Canada.

(5) Review of sanctions.—Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(6) Enforcement of sanctions.—If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) Testimony and production of papers.—

(A) Authority to obtain information.—For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) MANDAMUS.—Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) DEPOSITIONS.—For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) TIMELY SUBMISSIONS.—Information shall be submitted to the administering authority or the Commission during the course of a proceeding on a timely basis and shall be subject to comment by other parties within such reasonable time as the administering authority or the Commission shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority or the Commission may return the information to the party submitting it and not consider it.

SEC. 777A. SAMPLING AND AVERAGING.

(a) IN GENERAL.—For the purposes of determining United States price or foreign market value under sections 772 and 773, and for purposes of carrying out annual reviews under section 751, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) SELECTION OF SAMPLES AND AVERAGES.—The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

SEC. 778. INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENT.

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this title or section 303, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) RATE.—The rate of interest payable under subsection (a) for any period of time is the rate of interest established under section 6621 of the Internal Revenue Code of 1954 for such period.

SEC. 779. DRAWBACK TREATMENT.

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title shall not be treated as being regular customs duties.

SEC. 780. DOWNSTREAM PRODUCT MONITORING.

(a) PETITION REQUESTING MONITORING.—

(1) IN GENERAL.—A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (b). The petition shall specify—

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

(C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component parts into increased production and exportation to the United States of such downstream product.

(2) DETERMINATION REGARDING PETITION.—Within 14 days after receiving a petition submitted under paragraph (1), the administering authority shall determine—

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether—

(i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303, or

(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303.

(3) FACTORS TO TAKE INTO ACCOUNT.—In making a determination under paragraph (2)(A), the administering authority may, if appropriate, take into account such factors as—

(A) the value of the component part in relation to the value of the downstream product,

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and

(C) the relationship between the producers of component parts and producers of downstream products.

(4) PUBLICATION OF DETERMINATION.—The administering authority shall publish in the Federal Register notice of each determination made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any subparagraph of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) DETERMINATION NOT SUBJECT TO JUDICIAL REVIEW.—Notwithstanding any other provision of law, any determination made by the administering authority under paragraph (2) shall not be subject to judicial review.

(b) MONITORING BY THE COMMISSION.—

(1) IN GENERAL.—If the determination made under subsection (a)(2)(A) and a determination made under any clause of subsection (a)(2)(B) with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade

in the downstream product that is the subject of the determination made under subsection (a)(2)(A). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) REPORTS.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) ACTION ON BASIS OF MONITORING REPORTS.—The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

(1) consider the information in determining whether to initiate an investigation under section 702(a), 732(a), or 303 regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "component part" means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to—

(i) a countervailing or antidumping duty order issued under this title or section 303 that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 704, 734, or 303 after a preliminary affirmative determination under section 703(b), 733(b)(1), or 303 was made by the administering authority which included a determination that the estimated net subsidy was at least 15 percent ad valorem or that the estimated average amount by which the foreign market value exceeded the United States price was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, or material in a downstream product.

(2) The term "downstream product" means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

SEC. 781. PREVENTION OF CIRCUMVENTION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—

(1) IN GENERAL.—If—

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or 303,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies, and

(C) the difference between the value of such merchandise sold in the United States and the value of the imported parts and components referred to in subparagraph (B) is small,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) FACTORS TO CONSIDER.—In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade,

(B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order or finding.

(b) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

(1) IN GENERAL.—If—

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the difference between the value of such imported merchandise and the value of the merchandise described in subparagraph (B) is small, and

(D) the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) FACTORS TO CONSIDER.—In determining whether to include merchandise assembled or completed in a foreign country in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade,

(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is related to the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the issuance of such order or finding.

(c) MINOR ALTERATIONS OF MERCHANDISE.—

(1) IN GENERAL.—The class or kind of merchandise subject to—

(A) an investigation under this title,

(B) an antidumping duty order issued under section 736,

(C) a finding issued under the Antidumping Act, 1921, or

(D) a countervailing duty order issued under section 706 or section 303,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

(d) LATER-DEVELOPED MERCHANDISE.—

(1) IN GENERAL.—For purposes of determining whether merchandise developed after an investigation is initiated under this title or section 303 (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order issued under this title or section 303 as a result of such investigation, the administering authority shall consider whether—

(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product"),

(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

(C) the ultimate use of the earlier product and the later-developed product are the same,

(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) before making a determination under this subparagraph.

(2) EXCLUSION FROM ORDERS.—The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

(A) is classified under a tariff classification other than that identified in the petition or the administering authority's prior notices during the proceeding, or

(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) COMMISSION ADVICE.—

(1) NOTIFICATION TO COMMISSION OF PROPOSED ACTION.—Before making a determination—

(A) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(B) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or

(C) under subsection (d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or findings as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) REQUEST FOR CONSULTATION.—After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(3) COMMISSION ADVICE.—If the Commission believes, after consultation under paragraph (2), that a significant injury

issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

5. Judicial Review of Antidumping and Countervailing Duty Actions

Section 516A of the Tariff Act of 1930

[19 U.S.C. 1516A; P.L. 71-361, as amended by P.L. 96-39, P.L. 96-417, P.L. 96-542, P.L. 97-164, P.L. 98-573, P.L. 99-514, and P.L. 100-449]

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTIDUMPING DUTY PROCEEDINGS.

(a) Review of Determination.—

(1) Review of certain determinations.—Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under section 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances, or

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record.—

(A) In general.—Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act.

(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of Title 28 apply to an action under this section.

(5) TIME LIMITS IN CASES INVOLVING CANADIAN MERCHANDISE.—Notwithstanding any other provision of this subsection,

in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after—

(A) the date of publication in the Federal Register of—

(i) notice of any determination described in paragraph (1)(B) or a determination described in clause (ii) or (iii) of paragraph (2)(B), or

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of paragraph (2)(B), or

(B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B).

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under paragraph (1) of subsection (a) of this section, to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B) in an action brought under paragraph (2) of subsection (a) of this section, to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) EFFECT OF DECISIONS BY UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the Agreement.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) of this section shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) of this section by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) REMAND FOR FINAL DISPOSITION.—If the final decision of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) STANDING.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.

(e) LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries the liquidation of which was enjoined under subsection (c)(2) of this section,

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) DEFINITIONS.—

(1) ADMINISTERING AUTHORITY.—The term "administering authority" means the administering authority described in section 771(1) of this Act.

(2) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(3) INTERESTED PARTY.—The term "interested party" means any person described in section 771(9) of this Act.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(5) AGREEMENT.—The term "Agreement" means the United States-Canada Free-Trade Agreement.

(6) UNITED STATES SECRETARY.—The term "United States Secretary" means the secretary provided for in paragraph 4 of Article 1909 of the Agreement.

(7) CANADIAN SECRETARY.—The term "Canadian Secretary" means the secretary provided for in paragraph 5 of Article 1909 of the Agreement.

(g) REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING CANADIAN MERCHANDISE.—

(1) DEFINITION OF DETERMINATION.—For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority.

(2) EXCLUSIVE REVIEW OF DETERMINATION BY BINATIONAL PANELS.—If binational panel review of a determination is requested pursuant to Article 1904 of the Agreement, then, except as provided in paragraph (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.—

(A) IN GENERAL.—A determination is reviewable under subsection (a) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor Canada requested review by a binational panel pursuant to Article 1904 of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor Canada requested review of the original determination, or

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the Agreement.

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the United States-Canada Free-Trade Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under Chapter 19 of the Agreement violates the Constitution may be brought in the United States Court of Appeals for the District of Columbia Circuit. Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States Code.

(B) OTHER CONSTITUTIONAL REVIEW.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) COMMENCEMENT OF REVIEW.—Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagrah (A) or (B) by filing an action in accordance with the rules of the court.

(D) TRANSFER OF ACTIONS TO APPROPRIATE COURT.—Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) FRIVOLOUS CLAIMS.—Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure.

(F) Security.—

(i) **Subparagraph (A) actions.**—The security requirements of Rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions.—No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record.—The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to supreme court of court orders issued in subparagraph (A) actions.—Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 20 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries.—

(A) Application.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) General rule.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the Canadian Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the Agreement.

(iv) JUDICIAL REVIEW.—Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational level review is requested pursuant to article 1904 of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904.—

(A) IN GENERAL.—If a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) APPLICATION IF SUBPARAGRAPH (A) HELD UNCONSTITUTIONAL.—In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judical review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) SERVICE BY INTERESTED PARTY.—If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the Canadian Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review under article 1904 of the Agreement of a determination.

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of Canada received notice of the determination under article 1904(4) of the Agreement.

6. Third-Country Dumping: Section 1317 of the Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 1677k; P.L. 100-418]

SEC. 1317. THIRD-COUNTRY DUMPING.

(a) DEFINITIONS.—For purposes of this section:

(1) The term "Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures).

(2) The term "Agreement country" means a foreign country that has accepted the Agreement.

(3) The term "Trade Representative" means the United States Trade Representative.

(b) PETITION BY DOMESTIC INDUSTRY.—

(1) A domestic industry that produces a product that is like or directly competitive with merchandise produced by a foreign country (whether or not an Agreement country) may, if it has reason to believe that—

(A) such merchandise is being dumped in an Agreement country; and

(B) such domestic industry is being materially injured, or threatened with material injury, by reason of such dumping;

submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (c) on behalf of the domestic industry.

(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

(c) APPLICATION FOR ANTIDUMPING ACTION ON BEHALF OF THE DOMESTIC INDUSTRY.—

(1) If the Trade Representative, on the basis of the information contained in a petition submitted under paragraph (1), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Agreement country where the alleged dumping is occurring an application pursuant to Article 12 of the Agreement which requests that appropriate antidumping action under the law of that country be taken, on behalf of the United States, with respect to imports into that country of the merchandise concerned.

(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

(d) CONSULTATION AFTER SUBMISSION OF APPLICATION.—After submitting an application under subsection (c)(1), the Trade Representative shall seek consultations with the appropriate authority of the Agreement country regarding the request for antidumping action.

(e) ACTION UPON REFUSAL OF AGREEMENT COUNTRY TO ACT.—If the appropriate authority of an Agreement country refuses to undertake antidumping measures in response to a request made therefor by the Trade Representative under subsection (c), the Trade Representative shall promptly consult with the domestic industry on whether action under any other law of the United States is appropriate.

7. Antidumping Act of 1916

[15 U.S.C. 71-77; Act of Sept. 8, 1916, sections 800-806]

SEC. 800. DEFINITION.

When used in this subchapter, the term "person" includes partnerships, corporations, and associations.

SEC. 801. IMPORTATION OR SALE OF ARTICLES AT LESS THAN MARKET VALUE OR WHOLESALE PRICE.

It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.

SEC. 802 AGREEMENTS INVOLVING RESTRICTIONS IN FAVOR OF IMPORTED GOODS.

If any article produced in foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provision of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

SEC. 803. RULES AND REGULATIONS.

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

SEC. 804. RETALIATION AGAINST COUNTRY PROHIBITING IMPORTATIONS.

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

SEC. 805. RETALIATION AGAINST RESTRICTION OF IMPORTATIONS IN TIME OF WAR.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

SEC. 806. DISCRIMINATION AGAINST NEUTRAL AMERICANS IN TIME OF WAR.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

B. ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

Title III, Chapter 1 of Trade Act of 1974, as amended

[19 U.S.C. 2411; P.L. 93-618, as amended by P.L. 96-39, P.L. 98-573, and P.L. 100-418]

SEC. 301. ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) MANDATORY ACTION.—

(1) If the United States Trade Representative determines under section 304(a)(1) that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) the Contracting Parties to the General Agreement on Tariffs and Trade have determined, a panel of experts has reported to the Contracting Parties, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice—

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(B) the Trade Representative finds that—

(i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(ii) the foreign country has—

(I) agreed to eliminate or phase out the act, policy, or practice, or

(II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into account the impact of not taking such action on the credibility of the provisions of this chapter, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) DISCRETIONARY ACTION.—If the Trade Representative determines under section 304(a)(1) that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.

(c) SCOPE OF AUTHORITY.—

(1) For purposes of carrying out the provisions of subsection (a) or (b), the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate; or

(C) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b),

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b)—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 302(a), or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 302(b).

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(C)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b), or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible, or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) In taking actions under subsection (a) or (b), the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this chapter—

(1) The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

(II) provision of adequate and effective protection of intellectual property rights, or

(III) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by private firms or among private firms in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods to purchasing by such firms,

(ii) constitutes export targeting, or

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term "foreign country" includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term "Trade Representative" means the United States Trade Representative.

(9) The term "interested persons", only for purposes of sections 302(a)(4)(B), 304(b)(1)(A), 306(c)(2), and 307(a)(2), includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters,

and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b).

SEC. 302. INITIATION OF INVESTIGATIONS.

(a) PETITIONS.—

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues. including a public hearing—

(A) within the 30-day period beginning on the date of affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) INITIATION OF INVESTIGATION BY MEANS OTHER THAN PETITION.—

(1)(A) If the Trade Representative determines that an investigation should be initiated under this chapter with respect to any matter in order to determine whether the matter is actionable under section 301, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 135.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 182(a)(2), the Trade Representative shall initiate an investigation under this chapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this chapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this chapter with respect to any act, policy, or practice of a foreign country if the

Trade Representative determines that the inititation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officers of the Federal Government, during any investigation initiated under this chapter by reason of subparagraph (A).

(c) Discretion.—In determining whether to initiate an investigation under subsection (a) or (b) of any act, policy, or practice that is enumerated in any provision of section 301(d), the Trade Representative shall have discretion to determine whether action under section 301 would be effective in addressing such act, policy, or practice.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) In General.—

(1) On the date on which an investigation is initiated under section 302, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 302 involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of Request for Consultations.—

(1) Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 309(a)(3).

SEC. 304. DETERMINATIONS BY THE TRADE REPRESENTATIVE.

(a) In General.—

(1) On the basis of the investigation initiated under section 302 and the consultations (and the proceedings, if applicable) under section 303, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 301 exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 301.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement (other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979), the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and the Trade Representative does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to any investigation initiated by reason of section 302(b)(2) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights,

the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement (other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979), the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) CONSULTATION BEFORE DETERMINATIONS.—

(1) Before making the determinations required under subsection (a)(1), the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 135, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1), comply with such subparagraphs.

(c) PUBLICATION.—The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.

SEC. 305. IMPLEMENTATION OF ACTIONS.

(a) ACTIONS TO BE TAKEN UNDER SECTION 301.—

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 304(a)(1)(B) to take under section 301, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 301—

(i) if—

(I) in the case of an investigation initiated under section 302(a), the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 302(b)(1) or to which section 304(a)(3)(B) applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable to obtain United States rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(A) applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(B) applies by more than 90 days.

(b) ALTERNATIVE ACTIONS IN CERTAIN CASES OF EXPORT TARGETING.—

(1) If the Trade Representative makes an affirmative determination under section 304(a)(1)(A) involving export targeting by a foreign country and determines to take no action under section 301 with respect to such affirmation determination, the Trade Representative—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2)(A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A), and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A).

SEC. 306. MONITORING OF FOREIGN COMPLIANCE.

(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement of a kind described in clause (i), (ii), or (iii) of section 301(a)(2)(B) that is entered into under subsection (a) or (b) of section 301, by a foreign country—

(1) to enforce the rights of the United States under any trade agreement, or

(2) to eliminate any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 301.

(b) FURTHER ACTION.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).

(c) CONSULTATIONS.—Before making any determination under subsection (b), the Trade Representative shall—

(1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and

(2) provide an opportunity for the presentation of views by interested persons.

SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.

(a) IN GENERAL.—

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 301 if—

(A) any of the conditions described in section 301(a)(2) exist,

(B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or

(C) such action is being taken under section 301(b) and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 301, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall

provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) NOTICE; REPORT TO CONGRESS.—The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 301 and the reasons therefor.

(c) REVIEW OF NECESSITY.—

(1) If—

(A) a particular action has been taken under section 301 during any 4-year period, and

(B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,

such action shall terminate at the close of such 4-year period.

(2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.

(3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 301, the Trade Representative shall conduct a review of—

(A) the effectiveness in achieving the objectives of section 301 of—

(i) such action, and

(ii) other actions that could be taken (including actions against other products or services), and

(B) the effects of such actions on the United States economy, including consumers.

SEC. 308. REQUEST FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade Representative, or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by a person under subsection (a) is not available to the

Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for refusal.

(c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.—

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

SEC. 309. ADMINISTRATION.

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this chapter, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations made (and reasons therefor) under section 302,

(B) developments in, and the current status of, each investigation or proceeding under this chapter,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 301 with respect to investigations conducted under this chapter, and

(D) the commercial effects of actions taken under section 301.

[Section 1301(c) of the Omnibus Trade and Competitiveness Act of 1988 applies sections 301–309 as amended by that Act to:

[(1) petitions filed, and investigations initiated, under section 302 of the Trade Act of 1974 on or after the date of the enactment of this Act; and

[(2) petitions filed, and investigations initiated, before the date of enactment of this Act, if by that date no decision had been made under section 304 regarding the petition or investigation.]

SEC. 310. IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES.

(a) IDENTIFICATION.—

(1) By no later than the date that is 30 days after the date in calender year 1989, and also the date in calendar year 1990, on which the report required under section 181(b) is submitted to the appropriate Congressional committees, the Trade Representative shall identify United States trade liberalization priorities, including—

(A) priority practices, including major barriers and trade distorting practices, the elimination of which are likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent;

(B) priority foreign countries that, on the basis of such report, satisfy the criteria in paragraph (2);

(C) estimate the total amount by which United States exports of goods and services to each foreign country identified under subparagraph (B) would have increased during the preceding calendar year if the priority practices of such country identified under subparagraph (A) did not exist; and

(D) submit to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and publish in the Federal Register, a report which lists—

(i) the priority foreign countries identified under subparagraph (B),

(ii) the priority practices identified under subparagraph (A) with respect to each of such priority foreign countries, and

(iii) the amount estimated under subparagraph (C) with respect to each of such priority foreign countries.

(2) In identifying priority foreign countries under paragraph (1)(B), the Trade Representative shall take into account—

(A) the number and pervasiveness of the acts, policies, and practices described in section 181(a)(1)(A), and

(B) the level of United States exports of goods and services that would be reasonably expected from full implementation of existing trade agreements to which that foreign country is a party, based on the international competitive position and export potential of such products and services.

(3) In identifying priority practices under paragraph (1)(A), the Trade Representative shall take into account—

(A) the international competitive position and export potential of United States products and services,

(B) circumstances in which the sale of a small quantity of a product or service may be more significant than its value, and

(C) the measurable medium-term and long-term implications of government procurement commitments to United States exporters.

(b) INITIATION OF INVESTIGATIONS.—By no later than the date that is 21 days after the date on which a report is submitted to the appropriate Congressional committees under subsection (a)(1)(D), the Trade Representative shall initiate under section 302(b)(1) investigations under this chapter with respect to all of those priority practices identified in such report by reason of subsection (a)(1)(D) for each of the priority foreign countries. The Trade Representative may initiate investigations under section 302(b)(1) with respect to all other priority practices identified under subsection (a)(1)(A).

(c) AGREEMENTS FOR THE ELIMINATION OF BARRIERS.—

(1) In the consultations with a priority foreign country identified under subsection (a)(1) that the Trade Representative is required to request under section 303(a) with respect to an investigation initiated by reason of subsection (b), the Trade Representative shall seek to negotiate an agreement which provides for—

(A) the elimiation of, or compensation for, the priority practices identified under subsection (a)(1)(A) by no later than the close of the 3-year period beginning on the date on which such investigation is initiated, and

(B) the reduction of such practices over a 3-year period with the expectation that United States exports to the foreign country will, as a result, increase incrementally during each year within such 3-year period.

(2) Any investigation initiated under this chapter by reason of subsection (b) shall be suspended if an agreement described in subparagraphs (A) and (B) of paragraph (1) is entered into with the foreign country before the date on which any action under section 301 with respect to such investigation may be required under section 305(a) to be implemented.

(3) If an agreement described in paragraph (1) is entered into with a foreign country before the date on which any action under section 301 with respect to such investigation may be required under section 305(a) to be implemented and the Trade Representative determines that the foreign country is not in compliance with such agreement, the Trade Representative shall continue the investigation that was suspended by reason of such agreement as though such investigation had not been suspended.

(d) ANNUAL REPORTS.—

(1) On the date on which the report the Trade Representative is required to submit under subsection (a)(1)(D) in calendar year 1990, and on the anniversary of such date in the succeeding calendar years, the Trade Representative shall submit a report which includes—

(A) revised estimates of the total account determined under subsection (a)(1)(C) for each priority foreign country that has been identified under subsection (a)(1)(B),

(B) evidence that demonstrates, in the form of increased United States exports to each of such priority foreign countries during the previous calendar year—

(i) in the case of a priority foreign country that has entered into an agreement described in subsection (c)(1), substantial progress during each year within the 3-year period described in subsection (c)(1)(A) toward the goal of eliminating the priority practices identified under subsection (a)(1)(A) by the close of such 3-year period, and

(ii) in the case of a country which has not entered into (or has not complied with) an agreement described in subsection (c)(1), the elimination of such practices, and

(C) to the extent that the evidence described in subparagraph (B) cannot be provided, any actions that have been taken by the Trade Representative under section 301 with respect to such priority practices of each of such foreign countries.

(2) The Trade Representative may exclude from the requirements of paragraph (1) in any calendar year beginning after 1993 any foreign country that has been identified under subsection (a)(1)(A) if the evidence submitted under paragraph (1)(B) in the 2 previous reports demonstrated that all the priority practices identified under subsection (a)(1)(A) with respect to such foreign country have been eliminated.

C. FOREIGN DIRECT INVESTMENT

Section 307(b) of Trade and Tariff Act of 1984

[19 U.S.C. 2114d; P.L. 98-573]

SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

[(a) Amendment of definitions in section 102(g)(3) of Trade Act of 1974.]

(b)(1) If the United States Trade Representative, with the advice of the committee established by section 242 of the Trade Expansion [Act] of 1962 (19 U.S.C. 1872), determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in subsection (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) or paragraph (3) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before the date of enactment of this Act, or

(B) any written commitment relating to a foreign direct investment that is binding on the date of enactment of this Act has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C. 2133) for providing compensation for actions taken under section 203 of that Act.

D. UNFAIR PRACTICES IN IMPORT TRADE

Section 337 of the Tariff Act of 1930, as amended

[19 U.S.C. 1337; P.L. 71-361, as amended by P.L. 85-686, P.L. 93-618, P.L. 96-39, P.L. 96-417, P.L. 97-164, P.L. 98-620, P.L. 100-418, and P.L. 100-647]

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—

(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that—

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

(D) the importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry, in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, or mask work concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(4) For the purposes of this section, the phrase "owner, importer, or consignee" includes any agent of the owner, importer, or consignee.

(b) Investigation of Violations by Commission; Time Limits.—

(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (18 months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and 18-month periods prescribed by this subsection, there shall be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of section 303 of the Tariff Act of 1930, or of subtitle B of title VII of the Tariff Act of 1930, it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by such section and such Act. If the Commission has reason to believe the matter before it is based solely on alleged acts and effects which are within the purview of section 303, 701, or 731, of this Act, it shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 303, 701, or 731, of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act with respect to

a matter under this paragraph), the Commission may suspend its investigation during the time the matter is before the Secretary or administering authority for final decision. For purposes of computing the 1-year or 18-month periods prescribed by this subsection, there shall be excluded such period of suspension. Any final decision of the Secretary under section 303 of this Act or by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 303, 701 or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) of this section may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.

(d) EXCLUSION OF ARTICLES FROM ENTRY.—If the Commission determines, as a result of an investigation under this section, that there is violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers refuse such entry.

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—

(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the

articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the complainant to post a bond as a prerequisite to the issuance of an order under this subsection.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(f) CEASE AND DESIST ORDERS.—

(1) In addition to, or in lieu of, taking action under subsection (d) or (e) of this section, the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and in the case of a revocation, may take action under subsection (d) or (e) of this section, as the case may be.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of $100,000 or twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a

civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section, and

(B) such a violation is established by substantial, reliable, and probative evidence.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) FORFEITURE.—

(1) In addition to taking action under subsection (d), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reasons of an order issued under subsection (d); and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order, issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(3) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide—

(A) The written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d); and

(B) a copy of such written notice to the Commission.

(j) REFERRAL TO PRESIDENT.—

(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e) of this section, there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (g), or (i) of this section, with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), (f), (g), or (i) of this section with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c) of this section, be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g), or (i) of this section, with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) of this section or subject to a cease and desist order under subsection (f) of this section shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) of this section such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) PERIOD OF EFFECTIVENESS.—

(1) Except as provided in subsections (f) and (j) of this section, any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(l) Importation by or for United States.—Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i) of this section, in cases based on a proceeding involving a patent, copyright, or mask work under subsection (a)(1) shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28.

(m) Definition of United States.—For purposes of this section and sections 338 and 340 of this Act, the term "United States" means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j), or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.

E. POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

Chapter 1 of Title II (Sections 201–204) of the Trade Act of 1974, as amended

[19 U.S.C. 2251; P.L. 93–618, as amended by P.L. 96–39, Reorganization Plan No. 3 of 1979, P.L. 98–573, P.L. 100–418 and P.L. 100–647]

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

SEC. 201. ACTION TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.

(a) PRESIDENTIAL ACTION.—If the United States International Trade Commission (hereinafter referred to in this chapter as the "Commission") determines under section 202(b) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this chapter, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) POSITIVE ADJUSTMENT TO IMPORT COMPETITION.—

(1) For purposes of this chapter, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 204 terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 202(b).

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) A petition requesting action under this chapter for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request, or at any time before the 150th day after the date of filing be amended to request, provisional relief under subsection (d)(2).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this chapter referred to as the "Trade Representative"), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to ~~participa~~te may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this chapter.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b), the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

(i) firm in the domestic industry;

(ii) certified or recognized union or group of workers in the domestic industry;

(iii) State or local community;

(iv) trade association representing the domestic industry; or

(v) any other person or group of persons, may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

(1)(A) Upon the filing of a petition under subsection (b), the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days after the date referred to in subparagraph (A).

(3)(A) If the Commission makes an affirmative determination under paragraph (1) and the petitioner alleges the existence of critical circumstances, the Commission shall make a determination regarding such allegation—

(i) on or before the 120th day after the day on which the petition was filed, if such allegation was included in the petition on or before the 90th day after such filing date; or

(ii) on or before the date the report required under subsection (f) regarding the determination is submitted to the President, if such allegation was included in the petition after the 90th day, and on or before the 150th day, after such filing date.

(B) For purposes of this paragraph and subsection (d)(2) critical circumstances exist if a substantial increase in imports (either actual or relative to domestic production) over a relatively short period of time has led to circumstances in which a delay in taking action under this chapter would cause harm that would significantly impair the effectiveness of such action.

(4) In the course of any proceeding under this subsection, the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a), and to be heard at such hearings.

(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

(iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) In making determinations under subsection (b), the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this subsection:

(A) The term "domestic industry" includes producers located in the United States insular possession.

(B) The term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product that is like or directly competitive with an imported perishable agricultural product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A) (i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under paragraph (2) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports;

the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury or threat thereof. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury or threat thereof.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report form the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury or threat thereof.

(2)(A) The Commission shall, at the same time it makes an affirmative determination under subsection (b)(3)(A) regarding the existence of critical circumstances, find the amount or extent of provisional relief that is appropriate to address such critical circumstances. The Commission shall immediately report to the President each such affirmative determination and finding.

(B) After receiving a report from the Commission under subparagraph (A), the President shall, within 7 days after the day on which the report is received and after taking into account the finding of the Commission under subparagraph (A), proclaim such provisional relief, if any, that the President considers appropriate to address the critical circumstances.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(B) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or subsection (b)(1), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

(4)(A) Any provisional relief implemented under this subsection with respect to an imported article shall terminate on the day on which—

(i) if such relief was proclaimed under paragraph (1)(G), the Commission makes a negative determination under section 203(a) regarding injury or the threat thereof by imports of such article;

(ii) action described in section 203(a)(3) (A) or (C) takes effect under section 203 with respect to such article;

(iii) a decision by the President not to take any action under section 203(a) with respect to such article becomes final; or

(iv) whenever the President determines that, because of changed circumstances, such relief is no longer warranted.

(B) Any suspension of liquidation ordered under paragraph (3) with respect to an imported article shall terminate on the day on which provisional relief is terminated under subparagraph (A) with respect to the article.

(C) If an increase in, or the imposition of, a duty that is proclaimed under section 203 on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 203 regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(I) a short shelf life,

(II) a short growing season, or

(III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(B) The term "provisional relief" means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) COMMISSION RECOMMENDATIONS.—

(1) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

(C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2; or

(E) any combination of the actions described in subparagraphs (A) through (D).

(3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 203(e) are applicable to the action recommended by the Commission.

(4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—

(A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or

(B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.

(5) For purposes of making its recommendation under this subsection, the Commission shall—

(A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and

(B) take into account—

(i) the form and amount of action described in paragraph (2) (A), (B), and (C) that would prevent or remedy the injury or threat thereof,

(ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),

(iii) any individual commitment that was submitted to the Commission under subsection (a)(6),

(iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and

(v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.

(6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 203.

(f) Report by Commission.—

(1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The report shall be submitted at the earliest practicable time, but not later than 180 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) and an explanation of the basis for the determination.

(B) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) The findings required to be included in the report under subsection (c)(2).

(E) A copy of the adjustment plan, if any, submitted under section 201(b)(4).

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry is located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under section 202(a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) EXPEDITED CONSIDERATION OF ADJUSTMENT ASSISTANCE PETITIONS.—If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under chapter 2; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for certification of eligibility to apply for adjustment assistance under chapter 3.

(h) LIMITATIONS ON INVESTIGATIONS.—

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) If an article was the subject of an investigation under this section that resulted in any action described in section 203(a)(3)(A), (B), (C), or (E) being taken under section 203, no other investigation under this chapter may be initiated with respect to such article while such action is in effect or during the period beginning on the date on which such action terminates that is equal in duration to the period during which such action was in effect.

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.

(a) IN GENERAL.—

(1)(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 shall, with respect to each affirmative determination reported under section 202(f), make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefiting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 201(b)) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 202(e)(5).

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2;

(E) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(J) take any combination of actions listed in subparagraphs (A) through (I).

(4) The President shall take action under paragraph (1) within 60 days after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930); except that if a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 202(b)(1), request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) REPORTS TO CONGRESS.—

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection

(a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (c)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF.—

(1) Except as provided in paragraph (2), any action described in subsection (a)(3) (A), (B), or (C). that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more orderly marketing agreements in which case the action under subsection (a)(3) (A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 202(e)(1).

(e) LIMITATIONS ON ACTIONS.—

(1)(A) The duration of the period in which action taken under this section may be in effect shall not exceed 8 years.

(B) If the initial effective period for action taken under this section is less than 8 years, the President may extend the effective period once, but the aggregate of the initial period and the extension may not exceed 8 years.

(2) Action may be taken under subsection (a)(1) (A), (B), or (C) or under section 202(d)(2)(B) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury or threat thereof.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article.

(5) To the extent feasible, an effective period of more than 3 years for an action described in subsection (a)(3) (A), (B), or (C) shall be phased down during the period in which the action is taken, with the first reduction taking effect no later than the close of the day which is 3 years after the day on which such action first takes effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States; and

(ii) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 203(c), unless the Commission, in addition to making an affirmative determination under section 202(b)(1), determines in the course of its investigation under section 203(a) that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of subheadings 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of title V.

(f) ORDERLY MARKETING AND OTHER AGREEMENTS.—

(1) If the President takes action under this section other than the implementation of orderly marketing agreements, the President may, after such action takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an orderly marketing agreement implemented under subsection (a) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(g) REGULATIONS.—

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter.

(2) In order to carry out an orderly marketing or other international agreement concluded under this chapter, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any orderly marketing agreement concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from

warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

SEC. 204. MONITORING, MODIFICATION, AND TERMINATION OF ACTION.

(a) MONITORING.—

(1) So long as any action taken under section 203 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) The Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than—

(A) the 2nd-anniversary of the day on which the action under section 203 first took effect; and

(B) the last day of each 2-year period occurring after the 2-year period referred to in subparagraph (A).

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any extension, reduction, modification, or termination of the action taken under section 203 which is under consideration.

(b) REDUCTION, MODIFICATION, AND TERMINATION OF ACTION.—

(1) Action taken under section 203 may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2)(A)) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Nothwithstanding paragraph (1), the President is authorized to take such additional action under section 203 as may be necessary to eliminate any circumvention of any action previously taken under such section.

(c) EVALUATION OF EFFECTIVENESS OF ACTION.—

(1) After any action taken under section 203 has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 203 terminated.

(d) OTHER PROVISIONS.—

(1) Action by the President under this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 202(c)(4)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

F. RELIEF FROM MARKET DISRUPTION BY IMPORTS FROM COMMUNIST COUNTRIES

Section 406 of Trade Act of 1974, as amended

[19 U.S.C. 2436; P.L. 93-618, as amended by Reorganization Plan No. 3 of 1979 and P.L. 100-418]

SEC. 406. MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section 202(a), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 202 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) With respect to any affirmative determination of the Commission under subsection (a)—

(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect

on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 202 and 203 of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (2) with respect to imports of such article, on the day on which the action was taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 202(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term "significant cause" refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

G. AUTHORITY TO AUCTION IMPORT LICENSES

Section 1102 of Trade Agreements Act of 1979

[19 U.S.C. 2581, P.L. 96-39]

SEC. 1102. AUCTION OF IMPORT LICENSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President may sell import licenses at public auction under such terms and conditions as he deems appropriate. Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

(b) DEFINITION OF IMPORT LICENSE.—For purposes of this section, the term "import license" means any documentation used to administer a quantitative restriction imposed or modified after the date of enactment of this Act under—

(1) section 125, 203, 301, or 406 of the Trade Act of 1974 (19 U.S.C. 2135, 2253, 2411, or 2436),

(2) the International Emergency Economic Powers Act (50 U.S.C. App. 1701-1706),

(3) authority under the headnotes of the Tariff Schedules of the United States, but not including any quantitative restriction imposed under section 22 of the Agriculture Adjustment Act of 1934 (7 U.S.C. 624),

(4) the Trading With the Enemy Act (50 U.S.C. App. 1-44),

(5) section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854) other than for meat or meat products, or

(6) any Act enacted explicitly for the purpose of implementing any international agreement to which the United States is a party, including such agreements relating to commodities, but not including any agreement relating to cheese or dairy products.

H. TRADE ADJUSTMENT ASSISTANCE

Title II, chapters 2, 3, and 5 of Trade Act of 1974, as amended

[19 U.S.C. 2271; P.L. 93-618, as amended by P.L. 96-417, P.L. 97-35, P.L. 98-120, P.L. 98-369, P.L. 99-272, P.L. 100-418, and P.L. 100-647]

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

SEC. 221. PETITIONS.

(a) A petition for certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

[As provided in section 1430(d) of the Omnibus Trade and Competitiveness Act of 1988, paragraph (3) or section 222(a) amended as follows by section 1421(b) of that Act shall take effect on the date that is 1 year after the first date on which section 287 of the Trade Act of 1924 applies with respect to any articles:

[(3) increases of imports of articles like or directly competitive with articles—

[(A) which are produced by such workers' firm or appropriate subdivision thereof, or

[(B) for which such workers' firm, or appropriate subdivision thereof, provides essential goods or essential services, contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.]

(b) For purposes of subsection (a)(3)—

(1) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

[Paragraph (1)(B) of section 1421(a) of the Omnibus Trade and Competitiveness Act of 1988 provides:

[Notwithstanding section 223(b) of the Trade Act of 1974, or any other provision of law, any certification made under subchapter A of chapter 2 of title II of such Act which—

[(i) is made with respect to a petition filed before the date that is 90 days after the date of enactment of this Act, and

[(ii) would not have been made if the amendments made by subparagraph (A) had not been enacted into law,

shall apply to any worker whose most recent total or partial separation from the firm, or appropriate subdivision of the firm, described in section 222(a) of such Act occurs after September 30, 1985.]

SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.

(a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

SEC. 225. BENEFIT INFORMATION TO WORKERS.

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

(A) at the time of such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.

Subchapter B—Program Benefits

PART I—TRADE READJUSTMENT ALLOWANCES

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purpose of this paragraph, any week in which such worker—

(A) is on the employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States, or

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment after wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A) is enrolled in a training program approved by the Secretary under section 236(a), or

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement certified under subsection (c)(1) after the date described in subparagraph (B).

(b)(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

(B) before the first week following the week in which such certification is made under subchapter (A).

(c)(1)(A) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section

236(a), the Secretary shall submit to such worker a written statement certifying such finding.

(B) If a State or State agency has an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

(i) submit to such worker a written statement certifying such finding, and

(ii) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

(2)(A) If, after submitting to a worker a written statement certified under paragraph (1)(A), the Secretary finds that it is feasible or appropriate to approve a training program for such worker under section 236(a), the Secretary shall submit to such worker a written statement that revokes the certification made under paragraph (1)(A) with respect to such worker.

(B) If, after submitting to a worker a written statement certified under paragraph (1)(B), a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker, and to the Secretary, a written statement that revokes the certification made under paragraph (1)(B) with respect to such worker.

(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under paragraph (1) during the preceding year and the number of certifications made under paragraph (1) that were revoked during the preceding year.

SEC. 232. WEEKLY AMOUNTS.

(a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 231(b) or to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).

[Section 1430 (g) of the Omnibus Trade and Competitiveness Act of 1988 limits the application of paragraph (2) of section 233(a) of the Trade Act of 1974 (the amendment made by section 1425(a)):

[LIMITATION ON PERIOD FOR WHICH TRADE READJUSTMENT ALLOWANCES MAY BE MADE.—The amendment made by section 1425(a) shall not apply with respect to any total separation of a worker from adversely affected employment (within the meaning of section 247 of such Act) that occurs before the date of enactment of this Act if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974.]

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the

Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is participating in such training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

[Section 1425(b) of the Omnibus Trade and Competiveness Act of 1988 provides:

[(1) The provisions of subsections (a)(2) and (b) of section 233 of the Trade Act of 1974 shall not apply with respect to any worker who became totally separated from adversely affected employment (within the meaning of section 247 of such Act) during the period that began on August 13, 1981, and ended on April 7, 1986.

[(2)(A) Any worker who is otherwise eligible for payment of a trade readjustment allowance under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 by reason of paragraph (1) of this subsection may receive payments of such allowance only if such worker—

[(i) is enrolled in a training program approved by the Secretary under section 236(a) of such Act, and

[(ii) has been unemployed continuously since the date on which the worker became totally separated from the adversely affected employment, not taking into account seasonal employment, odd jobs, or part-time, temporary employment.

[(B) If the Secretary of Labor determines that—

[(i) a worker—

[(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subparagraph (A), or

[(II) has ceased to participate in such training program before completing such training program, and

[(ii) there is no justifiable cause for such failure or cessation,

no trade readjustment allowance may be paid to the worker under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 for the week in which such failure or cessation occurred, or any succeeding week, until the worker begins or resumes participation in a training program approved under section 236(a) of such Act.]

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 14 days if—

(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

(2) the break is provided under such training program.

SEC. 234. APPLICATION OF STATE LAWS.

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

SEC. 235. EMPLOYMENT SERVICES.

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with the States.

SEC. 236. TRAINING.

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers),

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $80,000,000.

[Section 1424(b) of the Omnibus Trade and Competitiveness Act of 1988 strikes out "80,000,000" and inserts in lieu thereof "$120,000,000" in paragraph (2)(A) effective, as provided in section 1430(d), on the date that is 1 year after the first date on which section 287 of the Trade Act of 1974 applies with respect to any articles.]

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary ~~to pay~~ the costs of training approved under this section will exceed the amount of the limitation proposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section, and

(F) any other training program approved by the Secretary.

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.

(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).

(b) The Secretary may, where appropppriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations, and

(c) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the work force of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-

the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(d) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(e) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

SEC. 237. JOB SEARCH ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b) (1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

SEC. 238. RELOCATION ALLOWANCES.

(a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certification, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

Subchapter C—General Provisions

SEC. 239. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 231(c)(2), and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

(e) Section 3302(c) of the Internal Revenue Code of 1954 (relating to credits against Federal unemployment tax) is amended by inserting after paragraph (3) the following new paragraph:

(4) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 1, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974,

then, in the case of taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsection (a) and (b) and paragraphs (1), (2) and (3) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

SEC. 240. ADMINISTRATION ABSENT STATE AGREEMENT.

(a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

SEC. 241. PAYMENTS TO STATES.

(a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

SEC. 242. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.

(a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

SEC. 243. FRAUD AND RECOVERY OF OVERPAYMENTS.

(a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount rcovered under this section shall be returned to the Treasury of the United States.

SEC. 244. PENALTIES.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

SEC. 245. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993, such sums as may be necessary to carry out the purposes of this chapter.

[Section 1426(c) of the Omnibus Trade and Competitiveness Act of 1988 provides:

[SPECIAL RULE.—In addition to amounts appropriated for payments under sections 236, 237, and 238 of the Trade Act of 1974 (19 U.S.C. 2296) for fiscal year 1988, such amounts as may be necessary for payments under such sections—

[(1) after the date of enactment of this Act, and

[(2) before October 1, 1988,

are hereby appropriated and shall be charged to the appropriation for payments under such sections for fiscal year 1989.]

SEC. 246. SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.

(a) The Secretary shall establish and carry out one or more demonstration projects during fiscal years 1989 and 1990 for the purpose of—

(1) determining the attractiveness of a supplemental wage allowance to various categories of workers eligible for assistance under this chapter, based on the amount and duration of the supplement;

(2) determining the effectiveness of a supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers; and

(3) determining whether a supplemental wage allowance should be made an option under the Trade Adjustment Assistance program for all fiscal years.

(b)(1) For purposes of this section, the term "supplemental wage allowance" means a payment that is made to an adversely affected worker who—

(A) accepts full-time employment at an average weekly wage that is less than the average weekly wage of the worker in the adversely affected employment,

(B) prior to such acceptance, is eligible for trade readjustment allowances under part I of subchapter B, and

(C) voluntarily elects to receive such payment in lieu of any trade readjustment allowances that the worker would otherwise be eligible to receive with respect to the period covered by the certification made under subchapter A that applies to such worker.

(2) A supplemental wage allowance shall be provided under any demonstration project established under subsection (a) to a worker described in paragraph (1) for each week during which the worker performs services in the full-time employment referred to in paragraph (1)(A) in an amount that does not exceed the lesser of—

(A) the amount of the trade readjustment allowance that the worker would have been eligible to receive for any week under part 1 of subchapter B if the worker had not accepted the full-time employment and had not made the election described in paragraph (1)(C), or

(B) the excess of—

(i) an amount equal to 80 percent of the average weekly wage of the worker in the adversely affected employment, over

(ii) the average weekly wage in the full-time employment.

(3)(A) Supplemental wage allowances shall not be provided under any demonstration project established under subsection (a) for more than 52 weeks.

(B) The total amount of supplemental wage allowances that may be paid to any worker under any demonstration project established under subsection (a) with respect to the period covered by the certification applicable to such worker shall not exceed an amount that is equal to the excess of—

(i) the amount of the limitation imposed under section 233(a)(1) with respect to such worker for such period, over

(ii) the amount of the trade readjustment allowances paid under part I of subchapter B to such worker for such period.

(c) The Secretary shall provide for an evaluation of demonstration projects conducted under this section to determine at least the following:

(1) the extent to which different age groups of eligible recipients utilize the supplemental wage allowance;

(2) the effect of the amount and duration of the supplemental wage allowance on the utilization of the allowance;

(3) the extent to which the supplemental wage allowance affects the demand for training and the appropriateness thereof;

(4) the extent to which the supplemental wage allowance facilitates the readjustment of workers who would not otherwise utilize benefits provided under this chapter;

(5) the extent to which the allowance affects the cost of carrying out the provisions of this chapter; and

(6) the effectiveness of the supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers.

(d) By no later than the date that is 3 years after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, the Secretary shall transmit to the Congress a report that includes—

(1) an evaluation of the projects authorized under this section that is conducted in accordance with subsection (c), and

(2) a recommendation as to whether the supplemental wage allowance should be available on a permanent basis as an option for some or all workers eligible for assistance under this chapter.

[Paragraph 2 of section 1423(d) of the Omnibus Trade and Competitiveness Act of 1988 provides:

[For purposes of funding the demonstration projects established under section 246(a) of the Trade Act of 1974, as added by paragraph (1) of this subsection—

[(A) the supplemental wage allowances payable under such projects shall be considered to be trade readjustment allowances payable under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and

[(B) the costs of administering such projects by the States shall be considered to be costs of administering such part I.]

SEC. 247. DEFINITIONS.

For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.]

(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico: and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad

Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note.)

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, résumé writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 and 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

SEC. 248. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

SEC. 249. SUBPENA POWER.

(a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 251. PETITIONS AND DETERMINATIONS.

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) that—

(i) sales or production, or both, of the firm have decreased absolutely, or

(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

(C) increases of imports of articles like or directly competitive with articles which are produced by such firm contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

[As provided in section 1430(d) of the Omnibus Trade and Competitiveness Act of 1988, subparagraph (c) of section 251(c)(1) amended as follows by section 1421(b) of that Act shall take effect on the date that is 1 year after the first date on which section 287 of the Trade Act of 1974 applies with respect to any articles:

[(C) increase of imports of articles like or directly competitive with articles—

[(i) which are produced by such firm, or

[(ii) for which such firm provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.]

(2) For purposes of paragraph (1)(C)—

(A) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise producing articles directly competitive with imports of oil and with imports of natural gas.

(d) A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

SEC. 252. APPROVAL OF ADJUSTMENT PROPOSALS.

(a) A firm certified under section 251 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this chapter. Such application shall include a proposal for the economic adjustment of such firm.

(b)(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Whenever the Secretary determines that any firm no longer requires assistance under this chapter, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.

SEC. 253. TECHNICAL ASSISTANCE.

(a) The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this chapter with respect to the firm. The technical assistance furnished under this chapter may consist of one or more of the following:

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 251 of this chapter.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance of a certified firm in the implementation of such a proposal.

(b)(1) The Secretary shall furnish technical assistance under this chapter through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

SEC. 254. FINANCIAL ASSISTANCE.

(a) The Secretary may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Loans or guarantee of loans shall be made under this chapter only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) No direct loan may be provided to a firm under this chapter if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 7(a) of the Small Business Act.

(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1986.

SEC. 255. CONDITIONS FOR FINANCIAL ASSISTANCE.

(a) No financial assistance shall be provided under this chapter unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b)(1) The rate of interest on direct loans made under this chapter shall be—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this chapter if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions; and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of the Internal Revenue Code of 1954.

(c) The Secretary shall make no loan or guarantee of a loan under section 254(b)(1) having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 254(b)(2) having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d)(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this chapter, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) The following conditions apply with respect to any loan guaranteed under this chapter:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) The Secretary shall maintain operating reserve with respect to anticipated claims under guarantees made under this chapter. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

(g) The Secretary may charge a fee to a lender which makes a loan guaranteed under this chapter in such amount as is necessary to cover the cost of administration of such guarantee.

(h)(1) The aggregate amount of loans made to any firm which are guaranteed under this chapter and which are outstanding at any time shall not exceed $3,000,000.

(2) The aggregate amount of direct loans made to any firm under this chapter which are outstanding at any time shall not exceed $1,000,000.

(i)(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 251, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligations to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of the Internal Revenue Code of 1954 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employ-

er securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) "employee stock ownership plan" means a plan described in section 4975(e)(7) of the Internal Revenue Code of 1954,

(B) "qualified trust" means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 and section 401 of the Internal Revenue Code of 1954,

(C) "qualified employer securities" means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) "equity capital" means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.

(a) In the case of any firm which is small (within the meaning of the Small Business Act and regulations promulgated thereunder), the Secretary may delegate all of his functions under this chapter (other than the functions under sections 251 and 252(d) with respect to the certification of eligibility and section 264) to the Administrator of the Small Business Administration.

(b) There are hereby authorized to be appropriated to the Secretary for fiscal years 1988, 1989, 1990, 1991, 1992, and 1993 such sums as may be necessary to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this chapter), which sums are authorized to be appropriated to remain available until expended.

(c) The unexpended balances of appropriations authorized by section 312(d) of the Trade Expansion Act of 1962 are transferred to the Secretary to carry out his functions under this chapter.

SEC. 257. ADMINISTRATION OF FINANCIAL ASSISTANCE.

(a) In making and administering guarantees and loans under section 254, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 254.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

(c) All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Secretary pursuant to this chapter, shall be available for financing functions performed under this chapter, including administrative expenses in connection with such functions.

(d) To the extent the Secretary deems it appropriate, and consistent with the provisions of section 552(b)(4) and section 552b(c)(4) of title 5, United States Code, that portion of any record, material or data received by the Secretary in connection with any application for financial assistance under this chapter which contains trade secrets or commercial or financial information regarding the operation or competitive position of any business shall be deemed to be privileged or confidential within the meaning of those provisions.

(e) Direct loans made, or loans guaranteed, under this chapter for the acquisition or development of real property or other capital assets shall ordinarily be secured by a first lien on the assets to be financed and shall be fully amortized. To the extent that the Secretary finds that exceptions to these standards are necessary to achieve the objectives of this chapter, he shall develop appropriate criteria for the protection of the interests of the United States.

SEC. 258. PROTECTIVE PROVISIONS.

(a) Each recipient of adjustment assistance under this chapter shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) The Secretary and the Comptroller General of the United States shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient petaining to adjustment assistance under this chapter.

(c) No adjustment assistance under this chapter shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

(d) No financial assistance shall be provided to any firm under this chapter unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such assistance or any part thereof was provided, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the provision of such financial assistance.

SEC. 259. PENALTIES.

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than $5,000 or imprisoned for not more than 2 years, or both.

SEC. 260. CIVIL ACTIONS.

In providing technical and financial assistance under this chapter the Secretary may sue and be sued in any court of record of a State having general jurisidiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 253 and 254 from the application of sections 516, 547, and 2679 of title 28 of the United States Code.

SEC. 261. DEFINITIONS.

For purposes of this chapter, the term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

SEC. 262. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

[SEC. 263. REPEALED.]

SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

(a) Whenever the Commission begins an investigation under section 201 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 201. Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section 201(b) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

SEC. 265. ASSISTANCE TO INDUSTRIES.

(a) The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this chapter. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 223 or 251.

(b) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

[CHAPTER 4—"ADJUSTMENT ASSISTANCE FOR COMMUNITIES" TERMINATED SEPTEMBER 30, 1982]

CHAPTER 5—MISCELLANEOUS PROVISIONS

SEC. 280. GENERAL ACCOUNTING OFFICE REPORT.

(a) The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under chapters 2, 3, and 4 of this title and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this title.

SEC. 281. COORDINATION.

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

SEC. 282. TRADE MONITORING SYSTEM.

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

SEC. 283. FIRMS RELOCATING IN FOREIGN COUNTRIES.

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b) It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this title,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

SEC. 284. JUDICIAL REVIEW.

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.

SEC. 285. TERMINATION.

(a) Chapter 4 shall terminate on September 30, 1982.

(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after September 30, 1993.

SEC. 286. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or appropriated to the Trust Fund under subsection (e).

(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d)(1) Amounts in the Trust Fund shall be available—

(A) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any other provision of Federal law,

(B) as provided in appropriation Acts—

(i) for expenditures that are required to carry out the provisions of chapters 2 and 3, including administrative costs, and

(ii) for payments required under subsection (e)(2).

(2) None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.

(3)(A) If the total amount of funds expended in any fiscal year to carry out chapters 2 and 3 (including administrative costs) exceeds an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed by section 287 during the preceding 1-year period, the Secretary of Labor and the Secretary of Commerce (in consultation with the Secretary of the Treasury) shall, notwithstanding any provision of chapter 2 or 3, make a pro rata reduction in—

(i) the amounts of the trade readjustment allowances that are paid under part I of subchapter B of chapter 2, and

(ii) the assistance provided under chapter 3,

to ensure (based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during the remainder of such fiscal year and for the fiscal year succeeding such fiscal year) that all workers and firms eligible for assistance under chapter 2 or 3 receive some assistance under chapter 2 or 3 and that the expenditures made in providing such assistance during the remainder of such fiscal year and the fiscal year succeeding such fiscal year do not exceed the amount of funds available in the Trust Fund to pay for such expenditures.

(B) No reduction may be made under this paragraph in the amount of any trade readjustment allowance payable under part I of subchapter B of chapter 2 to any worker who received such trade readjustment allowance under such part for the week preceding the first week for which such reduction is otherwise being made under this paragraph.

(C) If a pro rata reduction made under subparagraph (A) is in effect at the close of a fiscal year, the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, may adjust or modify such reduction at the beginning of the fiscal year succeeding such fiscal year, based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during that succeeding fiscal year.

(D) Any pro rata reduction made under subparagraph (A), and any pro rata reduction adjusted or modified under subparagraph (C), shall cease to apply after the week in which—

(i) a 1-year period ends during which the total amount of funds that would have been expended to carry out chapters 2 and 3, including administrative costs, if such reduction were not in effect did not exceed an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed during such 1-year period, or

(ii) the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, determine that the amount of funds available in the Trust Fund are sufficient to carry out chapters 2 and 3 without such reduction.

(e)(1)(A) There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d)(1)(B).

(B) Any advance appropriated to the Trust Fund under the authority of subparagraph (A) may be paid to the Trust Fund only to the extent that the total amount of advances paid during the fiscal year to the Trust Fund from any appropriation authorized under subparagraph (A) that are outstanding after such advance is paid to the Trust Fund does not exceed the lesser of—

(1) the excess of—

(I) the total amount of funds that the Secretary of the Treasury (in consultation with the Secretary of Labor and the Secretary of Commerce) estimates will be necessary for the payments and expenditures described in subparagraphs (A) and (B) of subsection (d)(1) for such fiscal year, over

(II) the total amount of funds that the Secretary of the Treasury estimates will be available in the Trust Fund during the fiscal year (determined without regard to any advances made under this subsection during such fiscal year), or

(ii) the excess of—

(I) an amount equal to 0.15 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, over

(II) the amount described in clause (i)(II).

(2) Advances made to the Trust Fund from appropriations authorized under paragraph (1)(A) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury of the United States when the Secretary of the Treasury determines that sufficient funds are available in the Trust Fund for such purposes.

(3) Interest on advances made from appropriations authorized under paragraph (1)(A) shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.

[Section 1430(c) of the Omnibus Trade and Competitiveness Act of 1988 sets forth the effective date of section 286 of the Trade Act of 1974 (the amendments made by section 1427):

[The amendments made by section 1427 shall take effect on the first date on which the amendment made by section 1428(b) applies with respect to any articles.]

SEC. 287. IMPOSITION OF ADDITIONAL FEE.

(a) In addition to any other fee imposed by law, there is hereby imposed a fee on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States during any fiscal year.

(b)(1) The rate of the fee imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President that is equal to the lesser of—

(A) 0.15 percent, or

(B) the percentage that is sufficient to provide the funding necessary to—

(i) carry out the provisions of chapters 2 and 3, and

(ii) repay any advances made under section 286(e).

(2) The President shall issue a proclamation setting forth the rate of the fee imposed by subsection (a) by no later than the date that is 15 days before the first date on which a fee is imposed under subsection (a).

(3)(A) For each fiscal year succeeding the first fiscal year in which a fee is imposed under subsection (a), the President shall issue a proclamation adjusting the rate of the fee imposed by subsection (a) during such fiscal year to the ad valorem rate that meets the requirements of paragraph (1) for such fiscal year.

(B) Any proclamation issued under subparagraph (A) for a fiscal year shall be issued at least 30 days before the beginning of such fiscal year.

(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other provision of law shall not prevent the imposition of a fee with respect to such article by subsection (a).

(2) No fee shall be imposed by subsection (a) with respect to—

(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty-free under schedule 8 of the Tariff Schedules of the United States, or

(B) any article which has a value of less than $1,000.

[Section 1430(b) of the Omnibus Trade and Competitiveness Act of 1988 sets forth the effective date for section 287 of the Trade Act of 1974 (the amendments made by section 1428(b)):

[(1) Except as otherwise provided in this subsection, the amendment made by section 1428(b) shall apply (if at all) to any article entered, or withdrawn from warehouse for consumption, after the date that is 30 days after the earlier of—

[(A) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(A),

[(B) the date that is 2 years after the date of enactment of this Act, or

[(C) the date of the enactment of a disapproval resolution that passes both Houses of the Congress within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act.

[(2) If the President determines on the date that is 2 years after the date of enactment of this Act that the fee imposed by the amendment made by section 1428(b) is not in the national economic interest, subparagraph (B) of paragraph (1) shall not be taken into account in applying the provisions of paragraph (1).

[(3) The amendment made by section 1428(b) shall apply (if at all) to the products of any foreign country described in section 1428(a)(1)(B) that are entered, or withdrawn from warehouse for consumption, after the later of—

[(A) the first date on which the fee imposed by such amendment applies with respect to products of foreign countries that are not described in section 1428(a)(1)(B), or

[(B) the date on which the President submits to the Congress the written statement described in section 1428(a)(3)(B) certifying the consent of such foreign country to the imposition of the fee.]

Section 1428(a) of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2397 note; P.L. 100–418]

SEC. 1428. IMPOSITION OF SMALL UNIFORM FEE ON ALL IMPORTS.

(a) NEGOTIATIONS.—

(1) The President shall—

(A) undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform fee of not more than 0.15 percent on all imports to such country for the purpose of using the revenue from such fee to fund programs which directly assist adjustment to import competition, and

(B) undertake negotiations with any foreign country that has entered into a free trade agreement with the United States under subtitle A or under section 102 of the Trade Act of 1974 to obtain the consent of such country to the imposition of such a fee by the United States.

(2) In the report that is submitted under section 163 of the Trade Act of 1974 for 1989 and 1990, the President shall include a statement on the progress of negotiations conducted under paragraph (1).

(3)(A) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a fee described in paragraph (1), the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such allowance.

(B) On the first day after the date of enactment of this Act on which any foreign country described in paragraph (1)(B) consents to the imposition of such a fee by the United States, the President shall submit to the Congress, and publish in the Federal Register, a written statement certifying such consent.

(4) If—

(A) the President does not submit to the Congress the written statement described in paragraph (3)(A) before the date that is 2 years after the date of enactment of this Act, and

(B) the President determines on such date that the fee imposed by the amendment made by subsection (b) is not in the national economic interest, the President shall submit to the Congress, and publish in the Federal Register, written notice of such determination on such date.

(5)(A) Any disapproval resolution that is introduced in the Senate or House of Representatives within the 90-day period beginning on the date that is 2 years after the date of enactment of this Act shall, for purposes of section 152 of the Trade Act of 1974 (19 U.S.C. 2192), be treated as a joint resolution described in section 152(a)(1)(A) of such Act.

(B) For purposes of this part, the term "disapproval resolution" means a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress disapproves of the determination made by the President under section 1428(a)(4)(A) of the Omnibus Trade and Competitiveness Act of 1988.".

Chapter 10: OTHER LAWS REGULATING IMPORTS

A. AUTHORITIES TO RESTRICT IMPORTS OF AGRICULTURAL AND TEXTILE PRODUCTS

1. Section 204 of Agricultural Act of 1956, as amended

[7 U.SC. 1854; P.L. 84-540, as amended by P.L. 87-488]

SEC. 204. The President may, whenever he determines such action appropriate, negotiate with representatives of foreign governments in an effort to obtain agreements limiting the export from such countries and the importation into the United States of any agricultural commodity or product manufactured therefrom or textiles or textile products, and the President is authorized to issue regulations governing the entry or withdrawal from warehouse of any such commodity, product, textiles, or textile products to carry out any such agreement. In addition, if a multilateral agreement has been or shall be concluded under the authority of this section among countries accounting for a significant part of world trade in the articles with respect to which the agreement was concluded, the President may also issue, in order to carry out such an agreement, regulations governing the entry or withdrawal from warehouse of the same articles which are the products of countries not parties to the agreement. Nothing herein shall affect the authority provided under section 22 of the Agricultural Adjustment Act (of 1933) as amended.

2. Section 22 of Agricultural Adjustment Act of 1933, as amended

[7 U.S.C. 624; Act of May 12, 1933, as added by P.L. 74-320, as amended by Act of Feb. 29, 1936, Act of June 3, 1937, Act of Jan. 25, 1940, Act of July 3, 1948, Act of June 28, 1950, Act of June 16, 1951, Act of Aug. 7, 1953, and P.L. 100-449]

SEC. 22. (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States International Trade Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in subsection (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: *Provided,* That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President. *And provided further,* That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine.

In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the International Trade Commission, such action to continue in effect pending the report and recommendations of the Trade Commission and action thereon by the President.

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32, Public Law Numbered 320, Seventy-Fourth Congress, approved August 24, 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States.

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.

(e) Any decision of the President as to facts under this section shall be final.

(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section; except that the President may, pursuant to articles 705.5 and 707 of the United States-Canada Free-Trade Agreement, exempt products of Canada from any import restriction imposed under this section.

3. Meat Import Act of 1979

[19 U.S.C. 1202 note; P.L. 88–482, as amended by P.L. 96–177 and P.L. 100–449]

Section 2 of the Act of August 22, 1964, entitled "An Act to provide for the free importation of certain wild animals, and to provide for the imposition of quotas on certain meat and meat products".

SEC. 2. (a) This section may be cited as the "Meat Import Act of 1979".

(b) For purposes of this section—

(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(2) The term "meat articles" means the articles provided for in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) under—

(A) subheadings 0201.10.00, 0201.20.60, 0201.30.60, 0202.10.00, 0202.20,60, and 0202.30.60 (relating to fresh, chilled, or frozen bovine meat);

(B) subheadings 0204.50.00, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, and 0204.43.40 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

(C) subheadings 0201.20.40, 0201.30.40, 0202.20.40, and 0202.30.40 (relating to processed meat of beef or veal other than high quality beef cuts).

Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).

(3) The term "Secretary" means the Secretary of Agriculture.

(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed 1,147,600,000 pounds; except that this aggregate quantity shall be—

(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

(2) adjusted further under subsection (d).

For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in subheadings 0102.90.20 and 0102.90.40 of the Harmonized Tariff Schedule of the United States entered during such year.

(d) The aggregate quantity referred to in subsection (c), as increased or decreased under paragraph (1) of such subsection, shall be adjusted further for any calendar year after 1979 by multiplying such quantity by a fraction—

(1) the numerator of which is the average annual per capita production of domestic cow beef during that calendar year (as estimated) and the 4 calendar years preceding such calendar year, and

(2) the denominator of which is the average annual per capita production of domestic cow beef in that calendar year (as estimated) and the preceding calendar year.

For the purposes of this subsection, the phrase "domestic cow beef" means that portion of the total domestic cattle slaughter designated by the Secretary as cow slaughter.

(e) For each calendar year after 1979, the Secretary shall estimate and publish—

(1) before the first day of such calendar year, the aggregate quantity prescribed for such calendar year under subsection (c) as adjusted under subsection (d); and

(2) before the first day of each calendar quarter in such calendar year, the aggregate quantity of meat articles which (but for this section) would be entered during such calendar year.

In applying paragraph (2) for the second or any succeeding calendar quarter in any calendar year, actual entries for the preceding calendar quarter or quarters in such calendar year shall be taken into account to the extent data is available.

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than (A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (l), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (l). The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in subheadings 0201.20.20, 0201.30.20, 0202.20,20, and 0202.30.20 of the Harmonized Tariff Schedule of the United States (relating to high-quality beef specially processed into fancy cuts).

(2) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is less than 110 percent of the aggregate quantity estimated by him under subsection (e)(1), and if a limitation is in effect under this section for such calendar

year with respect to meat articles, such limitation shall cease to apply as of the first day of such calendar quarter. If any such limitation has been in effect for the third calendar quarter of any calendar year, then it shall continue in effect for the fourth calendar quarter of such year unless the proclamation is suspended or the total quantity is increased pursuant to subsection (g).

(g) The President may, after providing opportunity for public comment by giving 30 days' notice by publication in the Federal Register of his intention to so act, suspend any proclamation made under subsection (f), or increase the total quantity proclaimed under such subsection, if he determines and proclaims that—

(1) such action is required by overriding economic or national security interests of the United States, giving special weight to the importance to the Nation of the economic well-being of the domestic cattle industry;

(2) the supply of meat articles will be inadequate to meet domestic demand at reasonable prices; or

(3) trade agreements entered into after the date of enactment of this Act insure that the policy set forth in subsections (c) and (d) will be carried out.

Any such suspension shall be for such periods, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection.

(h) Notwithstanding the previous subsections, the total quantity of meat articles which may be entered during any calendar year may not be increased by the President if the fraction described in subsection (d) for that calendar year yields a quotient of less than 1.0, unless—

(1) during a period of national emergency declared under section 201 of the National Emergencies Act of 1976, he determines and proclaims that such action is required by overriding national security interests of the United States;

(2) he determines and proclaims that the supply of articles of the kind to which the limitation would otherwise apply will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices; or

(3) on the basis of actual data for the first two quarters of the calendar year, a revised calculation of the fraction described in subsection (d) for the calendar year yields a quotient of 1.0 or more.

Any such suspension shall be for such period, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection. The effective period of any such suspension or increase made pursuant to paragraph (1) may not extend beyond the termination, in accordance with the provisions of section 202 of the National Emergencies Act of 1976, of such period of national emergency, notwithstanding the provisions of section 202(a) of that Act.

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries other than Canada on the basis of the shares of the United States market for meat articles such countries other than Canada supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

(j) The Secretary shall issue such regulations as he determines to be necessary to prevent circumvention of the purposes of this section.

(k) All determinations by the President and the Secretary under this section shall be final.

(l) If the President—

(1) has—

(A) proclaimed limitations on meat articles under the preceding provisions of this section, or

(B) entered into one or more agreements other than with Canada regarding meat articles pursuant to section 204 of the Agricultural Act of 1956; and

(2) determines that the Government of Canada has not taken equivalent action;

the President may by proclamation limit the total quantities of articles described in subsection (b)(2) (A), (B), and (C) and originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) that may enter the United States. A limitation imposed under the preceding sentence shall be only to the extent that, and only for such period of time as, the President determines sufficient to prevent frustration of the limitations placed on meat articles imported from other countries under this section or actions taken with respect to meat articles under agreements negotiated pursuant to section 204 of the Agricutural Act of 1956.

4. Reciprocal Meat Inspection Requirement

Section 20(h) of the Federal Meat Inspection Act

[21 U.S.C. 620; P.L. 90-201 as added by P.L. 100-418]

SEC. 20.

(h)(1) As used in this subsection:

(A) The term "meat articles" means carcasses, meat and meat food products of cattle, sheep, swine, goats, horses, mules, or other equines, that are capable of use as human food.

(B) The term "standards" means inspection, building construction, sanitary, quality, species verification, residue, and other standards that are applicable to meat articles.

(2) On request of the Committee on Agriculture or the Committee on Ways and Means of the House of Representatives or the Committee on Agriculture, Nutrition, and Forestry or the Committee on Finance of the Senate, or at the initiative of the Secretary, the Secretary shall, as soon as practicable, determine whether a particular foreign country applies standards for the importation of meat articles from the United States that are not related to public health concerns about end-product quality that can be substantiated by reliable analytical methods.

(3) If the Secretary determines that a foreign country applies standards described in paragraph (2)—

(A) the Secretary shall consult with the United States Trade Representative; and

(B) within 30 days after the determination of the Secretary under paragraph (2), the Secretary and the United States Trade Representative shall recommend to the President whether action should be taken under paragraph (4).

(4) Within 30 days after receiving a recommendation for action under paragaph (3), the President shall, if and for such time as the President considers appropriate, prohibit imports into the United States of any meat articles produced in such foreign country unless it is determined that the meat articles produced in that country meet the standards applicable to meat articles in commerce within the United States.

(5) The action authorized under paragraph (4) may be used instead of, or in addition to, any other action taken under any other law.

5. Sugar Import Quotas Under Headnote Authority

[Additional U.S. Notes 3 and 4 of Chapter 17 of the Harmonized Tariff Schedule of the United States]

CHAPTER 17.—SUGARS AND SUGAR CONFECTIONERY

Additional U.S. Notes

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3. (a)(i) The total amount of sugars, syrups and molasses described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40 and 2106.90.10, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, during the period January 1, 1988 through December 31, 1988, shall not exceed in the aggregate 919,772 metric tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this note (the total base quota amount) shall be 884,505 metric tons, raw value; 1,814 metric tons, raw value, may only be used for the importation of "specialty sugars" as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this note; and the remaining 33,453 metric tons, raw value, may only be imported for the purposes specified in paragraph (c)(v) of this note (the quota adjustment amount).

(ii) Sugar entering the United States during a quota period may be charged to the previous quota period with the approval of the Secretary of Agriculture. The Secretary may only grant such approval if (A) the sugar was shipped in time to enter the United States during the previous quota period and (B) the sugar would have successfully entered the United States during the previous quota period but for forces beyond the control of the importer, including but not limited to engine failure of the transporting ocean carrier, unexpectedly severe weather conditions, and acts of God.

(b) Beginning with the third calendar quarter of 1982, the Secretary of Agriculture (hereinafter the Secretary) shall establish for each calendar quarter the total amount (expressed in terms of raw value) of sugars, syrups and molasses described in the above-mentioned subheadings, the products of all foreign countries, which may be entered, or withdrawn from warehouse for consumption, during such calendar quarter. The Secretary shall determine such amount, inform the Secretary of the Treasury of his determination, and file notice thereof with the Federal Register no later than the 15th day of the month immediately preceding the calendar quarter during which such determination shall be in effect. In determining such amounts the Secretary shall give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

(c)(i) The total amounts of sugars, syrups and molasses permitted to be imported under paragraphs (a) and (b) of this note shall be allocated as follows (in percent) to the supplying countries or areas listed below:

[Percentage distribution]

Country:	
1. Canada	1.1
2. Guatemala	4.8
3. Belize	1.1
4. El Salvador	2.6
5. Honduras	1.0
6. Nicaragua	2.1
7. Costa Rica	1.5
8. Panama	2.9
9. Jamaica	1.1
10. Dominican Republic	17.6
11. Colombia	2.4
12. Guyana	1.2
13. Ecuador	1.1
14. Peru	4.1
15. Brazil	14.5
16. Argentina	4.3
17. Thailand	1.4
18. Philippines	15.8
19. Taiwan	1.2
20. Australia	8.3
21. Mauritius	1.1
22. Mozambique	1.3
23. Swaziland	1.6
24. Barbados	.7
25. Trinidad-Tobago	.7
26. Bolivia	.8
27. India	.8
28. Fiji	.7
29. Malawi	.7
30. Zimbabwe	1.2
31. Other specified countries and areas	.3

NOTE 1: The category "Other specified countries and areas" shall consist of the following: Mexico, Haiti, Paraguay, Saint Christopher-Nevis, Malagasy Republic, the Ivory Coast, Congo and Uruguay.

NOTE 2: Beginning with the quota year beginning September 26, 1983, the quota allocations for Nicaragua, Costa Rica, El Salvador and Honduras shall be as follows:

Nicaragua—5,443 metric tons, raw value.

El Salvador—2.6 percent of the total base quota amount permitted to be imported under paragraphs (a) and (b) of this legal note plus 18 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value.

Honduras—1 percent of the total base quota amount plus 52 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value.

Costa Rica—1.5 percent of the total base quota amount plus 30 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value.

Notwithstanding the allocation provisions set forth above, the Secretary may, after consultation with the United States Trade Representative, the Department of State and the Department of the Treasury, issue regulations modifying the allocation provisions governing "Other specified countries and areas" if the Secretary determines that such modifications are appropriate to provide such countries and areas reasonable access to the U.S. sugar market. Such regulations may, among other things, provide for the establishment of minimum quota amounts, the establishment of quota periods other than quarterly periods, and the carrying forward of unused quota amounts into subsequent quota periods.

(ii) The total amount of specialty sugars permitted to be imported under paragraphs (a) and (b) of this note shall be allocated by providing each of the folowing countries an annual quota of 72 metric tons, raw value, for the importation of specialty sugars:

Belgium; Burma; Cameroon; People's Republic of China; Denmark; France; Federal Republic of Germany; Hong Kong; Indonesia; Ireland; Italy; Japan; Kenya; Luxembourg; Netherlands; Netherlands Antilles; South Korea; Surinam; Sweden; Switzerland; United Kingdom; Venezuela; and Yemen.

(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this note, in allocating any limitation imposed under any paragraph of this note on the quantity of sugars, syrups, and molasses described in the subheadings cited under paragraph (a) of this note which may be entered—

(A) the percentage allocation made to the Philippines under the paragraph may not be reduced, and

(B) no allocation may be made to the Republic of South Africa.

(d) The Secretary, after consultation with the United States Trade Representative and the Department of State, may suspend the allocation provisions of paragraph (c), or may establish quantitative limitations for periods of time other than calendar quarters as provided in paragraph (b), if the Secretary determines that such action or actions are appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. The Secretary may reinstate the allocation provisions of paragraph (c), or may amend any quantitative limitations (including the time period for which such limitations are applicable) which have previously been established under this paragraph or paragraph (b), if the Secretary determines that the considerations set forth in the previous sentence so warrant. The Secretary shall inform the Secretary of the Treasury of any determination made under this paragraph. Notice of such determinations shall be filed with the Federal Register, and such determinations shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the Secretary.

(e) The United States Trade Representative or his designee, after consultation with the Department of Agriculture and the Department of State, may modify the allocation provisions of paragraph (c) (including the deletion or addition of any country or area), and may prescribe further rules, limitations or prohibitions on the entry of sugar if he finds that such actions are appropriate to carry out the obligations of the United States under the International Sugar Agreement, 1977, or any successor agreement thereto, and that such actions give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. If the United States Trade Representative takes any such action, he shall so inform the Secretary of Agriculture and shall publish notice thereof in the Federal Register. Such action shall not become effective until the day following the date of filing of such notice or such later date as may be specified by the United States Trade Representative.

(f) The Secretary shall, in consultation with the United States Trade Representative, the Department of State and other concerned agencies, review the operation of this note prior to September 1 of each year. In making such review, the Secretary shall determine whether the continued operation of paragraphs (b), (c), (d) and (e) of this note gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and whether the operation of paragraph (g) of this note would give due consideration to such interests. The Secretary shall file a notice of such determinations in the Federal Register no later than September 1 of each year. If the Secretary determines that the continued operation of paragraphs (b), (c), (d) and (e) of this note would not give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, and that the provisions of paragraph (g) of this note would give due considerations to such interests, paragraphs (b), (c), (d) and (e) of this note shall terminate as of the first day of October following such determination.

(g) If paragraphs (b), (c), (d) and (e) of this note are terminated under the provisions of paragraph (f) of this note, the total amount of sugars, syrups and molasses described in the above-mentioned subheadings, the products of all foreign countries, entered, or withdrawn from warehouse for consumption, in any fiscal (October 1–September 30) year shall not exceed, in the aggregate, 6,259,576 metric tons, raw value. The United States Trade Representative or his designee may allocate this quantity among supplying countries or areas, and may prescribe further rules, regulations, limitations or prohibitions on the entry of sugar in accordance with the International Sugar Agreement, 1977, and Public Law 96-236. The United States Trade Representative or his designee shall inform the Commissioner of Customs of any such action regarding the importation of sugar, and shall publish notice thereof in the Federal Register.

(h) For the purposes of this note, the term "raw value" means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degree by the polariscope as determined in accordance with regulations issued by the Secretary of the Treasury. Such regulations may, among other things, provide:

(1) for the entry of such articles pending a final determination of polarity; and (2) that positive or negative adjustments for differences in preliminary and final raw values be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner:

(i) For articles described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.40, 1806.10.40 and 2106.90.10, by multiplying the number of kilograms thereof by the greater of 0.93, or 1.07 less 0.1075 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).

(ii) For articles described in subheading 1702.90.30, by multiplying the number of kilograms of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.

(iii) The Secretary of the Treasury shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar for which he determines that the raw value cannot be measured adequately under the above provisions.

(ij) The Secretary may exempt the entry of articles described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40 and 2106.90.10 from the requirements or limitations established pursuant to this note on the condition that such articles:

(a) be used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption; or

(2) be re-exported in refined form or in sugar-containing products. Such articles shall be entered under licenses issued pursuant to regulations promulgated by the Secretary. In promulgating such regulations, the Secretary shall give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such regulations may contain any terms, conditions, bonds or other limitations as the Secretary determines are appropriate to ensure that articles imported under license are used only for the purposes specified in this paragraph. This paragraph shall terminate whenever paragraphs (b), (c), (d) and (e) of this note are terminated under paragraph (f) of this note.

(4) For such period as there is in effect a proclamation issued by the President to the authority vested in him by section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, syrups, and molasses, provided for in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30,

1702.90.40, 1806.10.40 and 2106.90.10, in accordance with general note 3(c)(vi), shall be governed in the following manner:

(a)(i) For all beneficiary countries, except those subject to subparagraph (ii) and paragraph (b), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of the Caribbean Basin Economic Recovery Act; except that the President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 on the duty-free treatment afforded to beneficiary countries under general note 3(c)(vi) if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(ii) As an alternative to subparagraph (i), the President may, at the request of a beneficiary country not subject to paragraph (b) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, syrups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, syrups, and molasses entered from that country.

(b) For the following countries whose exports of sugar, syrups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974, the quantity of sugar, syrups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Dominican Republic, 780,000 metric tons
Guatemala, 210,000 metric tons
Panama, 160,000 metric tons

(c) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed upon paragraph (a)(ii) or (b) if he determines such action will not interfere with the price-support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, syrups, and molasses permitted to be entered by paragraphs (a)(ii) and (b) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(d) Any quantitative limitation imposed on a beneficiary country under paragraphs (a)(ii) and (b) shall apply only to the extent that such limitation permits a lesser quantity of sugar, syrups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any provision of law.

6. Import Prohibitions on Certain Agricultural Commodities Under Marketing Orders

[7 U.S.C. 608e—1; Act of Mar. 12, 1933, as amended by Act of Aug. 31, 1954, P.L. 87-128, P.L. 91-670, P.L. 95-133, P.L. 97-312 and P.L. 100-418]

SEC. 608e-1. IMPORT PROHIBITIONS ON TOMATOES, AVOCADOS, LIMES, ETC; RULES AND REGULATIONS.

(a) Notwithstanding any other provision of law, whenever a marketing order issued by the Secretary of Agriculture pursuant to section 608c of this title contains any terms or conditions regulating the grade, size, quality or maturity of tomatoes, raisins, olives (other than Spanish-style green olives), prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates, filberts, table grapes, or eggplants produced in the United States the importation into the United States of any such commodity, other than dates for processing, during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder: *Provided*, That this prohibition shall not apply to such commodities when shipped into the continental United States from the Commonwealth of Puerto Rico or any Territory or possession of the United States where this chapter has force and effect; *Provided further,* That whenever two or more such marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States or any such commodity, other than dates for processing, shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition. Such prohibition shall not become effective until after the giving of such notice as the Secretary of Agriculture determines reasonable, which shall not be less than three days. In determining the amount of notice that is reasonable in the case of tomatoes the Secretary of Agriculture shall give due consideration to the time required for their transportation and entry into the United States after picking. Whenever the Secretary of Agriculture finds that the application of the restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the domestic and imported commodity he shall establish with respect to the imported commodity, other than dates for processing, such grade, size, quality, and maturity restrictions by varieties, types, or other classifications as he finds will be equivalent or comparable to those imposed upon the domestic commodity under such order. The Secretary of Agriculture may promulgate such rules and regulations as he deems necessary, to carry out the provisions of this section. Any person who violates any provision of this section or of any rule, regulation, or order promulgated hereunder shall be subject to a forfeiture in the amount prescribed in section 608a(5) of this title or, upon conviction, a penalty in the amount prescribed in section 608c(14) of this title, or to both such forfeiture and penalty.

(b)(1) The Secretary may provide for a period of time (not to exceed 35 days) in addition to the period of time covered by a marketing order during which the marketing order requirements would be in effect for a particular commodity during any year if the Secretary determines that such additional period of time is necessary—

(A) to effectuate the purpose of this Act; and

(B) to prevent the circumvention of the grade, size, quality, or maturity standards of a seasonal marketing order applicable to a commodity produced in the United States by imports of such commodity.

(2) In making the determination required by paragraph (1), the Secretary, through notice and comment procedures, shall consider—

(A) to what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) if the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) the availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

(3) An additional period established by the Secretary in accordance with this subsection shall be—

(A) announced not later than 30 days before the date such additional period is to be in effect; and

(B) reviewed by the Secretary on request, through notice and comment procedures, at least every 3 years in order to determine if the additional period is still needed to prevent circumvention of the seasonal marketing order by imported commodities.

(4) For the purposes of carrying out this subsection, the Secretary is authorized to make such reasonable inspections as may be necessary.

7. International Coffee Agreement Act of 1980, as amended

[19 U.S.C. 1356k–n; P.L. 96–599, as amended by P.L. 97–276, P.L. 97–446, P.L. 98–120, and P.L. 100–418]

SEC. 2. IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT, 1983; PRESIDENTIAL POWERS AND DUTIES.

On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, 1989, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transporta-

tion or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate or origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement.

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

SEC. 3. DEFINITION OF COFFEE.

As used in sections 1356k to 1356n of this title, the term "coffee" means coffee as defined in article 3 of the International Coffee Agreement, 1983.

SEC. 4. DELEGATION OF PRESIDENTIAL POWERS AND DUTIES; PROTECTION OF INTERESTS OF UNITED STATES CONSUMERS; REMEDIAL ACTION.

The President may exercise any powers and duties conferred on him by sections 1356k to 1356n of this title through such agency or officer as he shall direct. The powers and duties conferred by sections 1356k to 1356n of this title shall be exercised in the manner the President considers appropriate to protect the interest of United States consumers. In the event the President determines that there has been an unwarranted increase in the price of coffee due in whole or in part to the International Coffee Agreement, or to market manipulation by two or more members of the International Coffee Organization, the President shall request the International Coffee Council or the Executive Board to increase supplies of coffee available to world markets by suspending coffee export quotas and to take any other appropriate action. At the same time he shall report his determination to the Congress. In the event the International Coffee Council has failed to take corrective action to remedy the situation within a reasonable time after such request, the President shall submit to the Congress such recommendations as he may consider appropriate to correct the situation. In the event that members of the International Coffee Organization involved in market manipulation which has resulted in price increases have failed to remedy the situation within a reasonable time after a request for remedy, the exercise of the authority set forth in section 1356k of this title shall be suspended until the

President determines that effective market manipulation activities have ceased.

SEC 5. REPORT TO THE CONGRESS.

The President shall submit to the Congress an annual report on the International Coffee Agreement, 1983. Such report shall contain full information on the operation of such agreement, including full information with respect to the general level of prices of coffee and matters pertaining to the transportation of coffee from exporting countries to the United States. The report shall also include a summary of the actions the United States and the International Coffee Organization have taken to protect the interest of United States consumers.

B. STEEL IMPORT STABILIZATION ACT

Title VIII of Trade and Tariff Act of 1984

[19 U.S.C. 2253 note; P.L. 98-573 as amended by P.L. 100-418]

SEC. 801. SHORT TITLE.

This title may be cited as the "Steel Import Stabilizaton Act".

SEC. 802. FINDINGS AND PURPOSES.

(a) The Congress finds that—

(1) The United States steel industry has a serious need to modernize its plant and equipment in order to enhance its international competitiveness, and needs increased capital investments to effect that modernization;

(2) the ability of the domestic steel industry to be internationally competitive is, and has been, impeded by the effects of the enormous Federal budget deficit, an overvalued dollar, and increasing trade deficits, as well as serious injury due to imports of, and subsidies, dumping, and the use of other unfair and restrictive foreign trade practices regarding steel products;

(3) the extensiveness of the unfair trade practices engaged in the international market regarding such products imposes unusually harsh burdens on the United States steel industry in combating those practices through the trade remedy laws;

(4) expeditious and effective action under the President's national policy for the steel industry, including more vigorous efforts by the Executive Branch to self-initiate and pursue remedies against those practices, is needed to eliminate the adverse effects of those unfair trade practices;

(5) import relief will be ineffective and will not serve the national economic interest unless the industry during the period of relief engages in serious efforts substantially to modernize and to improve its international competitiveness; and

(6) full and effective implementation of the national policy for the steel industry will substantially improve the economy and employment in both the steel and iron ore-producing sectors.

(b) The purposes of this title are—

(1) to supplement the authority of the President to achieve the goals of the national policy for the steel industry by granting enforcement powers regarding those bilateral arrangements that are entered into or undertaken for purposes of implementing that national policy; and

(2) to make the continuation of those powers subject to the condition that the steel industry undertake a comprehensive modernization of its plant and equipment.

SEC. 803. SENSE OF CONGRESS REGARDING THE NATIONAL POLICY FOR THE STEEL INDUSTRY.

It is the sense of the Congress that—

(1) the President should, in conjunction with the authority granted under this title, implement the national policy for the steel industry in a manner to ensure that the foreign share of the United States market for steel products is commensurate with a level which would obtain under conditions of fair, unsubsidized competition; and it is further the sense of Congress that when this policy is fully implemented, it will result in a foreign share of the domestic market of 17.0 to 20.2 percent, subject to such modifications that changes in market conditions and the composition of the steel industry may require;

(2) the national policy for the steel industry should not be implemented in a manner contrary to the antitrust laws; and

(3) if the national policy for the steel industry does not produce satisfactory results within a reasonable period of time, the Congress will consider taking such legislative actions concerning steel and iron ore products as many be necessary or appropriate to stabilize conditions in the domestic market for such products.

SEC. 804. DEFINITIONS.

As used in this title—

(1) The term "bilateral arrangement" means any arrangement, agreement, or understanding (including, but not limited to, any surge control understanding or suspension agreement) entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of steel products as may be necessary to implement the national policy for the steel industry.

(2) The term "national policy for the steel industry" means those actions and elements described in Executive Communication 4046, dated September 18, 1984 (printed as House Document 98-263).

(3) The term "steel industry" means producers in the United States of steel products.

SEC. 805. ENFORCEMENT AUTHORITY.

(a) Subject to section 806, the President is authorized to carry out such actions as may be necessary or appropriate to enforce the quantitative limitations, restrictions, and other terms agreed to between the United States and steel-exporting nations as contained in bilateral arrangements. Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of steel products.

(b)(1) In connection with the provisions of the Arrangement on European Communities' Export of Pipes and Tubes to the United States of America, contained in an exchange of letters dated October 21, 1982, between representatives of the United States and the Commission of the European Communities, including any modification, clarification, extension, or successor agreement thereto (collectively referred to hereinafter as "the Arrangement"), the Secretary of Commerce is authorized to request the Secretary of the Treasury to take action pursuant to paragraph (2) of this subsection whenever he determines that—

(A) the level of exports of pipes and tubes to the United States from the European Communities is exceeding the average share of annual United States apparent consumption specified in the Arrangement, or

(B) distortion is occurring in the pattern of United States-European Communities trade within the pipe and tube sector taking into account the average share of annual United States apparent consumption accounted for by European Communities articles within product categories developed by the Secretary of Commerce.

Any request to the Secretary of the Treasury pursuant to this subsection by the Secretary of Commerce shall identify one or more categories of pipe and tube products with respect to which action under paragraph (2) is requested.

(2) At the request of the Secretary of Commerce pursuant to paragraph (1), the Secretary of the Treasury shall take such action as may be necessary to ensure that the aggregate quantity of European Communities articles in each product category identified by the Secretary of Commerce in such request that are entered into the United States are in accordance with the terms of the Arrangement.

(3) Nothing in this subsection may be construed as prohibiting the Secretary of Commerce from permitting the importation of additional quantities of specific products in cases where the Secretary determines that conditions of short supply or emergency economic situations related to market demand exist; except that a short supply or emergency economic situation shall not be considered to exist solely because domestic producers are unwilling to supply products at prices below their costs of production (as determined by the Secretary of Commerce).

(c) For purposes of carrying out this title, the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States.

(d)(1) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereafter in this subsection referred to as an "arrangement country") may be treated for purposes of the quantitative restrictions and related terms under that arrangement as if it were a product of the arrangement country.

(2) The President may implement such procedures as may be necessary or appropriate to carry out the purpose of paragraph (1).

(3) The United States Trade Representative may, in a manner consistent with the purpose of any so-called "third country equity provision" of an arrangement entered into under the President's Steel Policy, take such actions as he deems necessary with respect to steel imports of any other country or countries so as to ensure the effectiveness of any portion of such arrangement.

SEC. 806. EFFECTIVE PERIOD OF TITLE.

(a) In General.—Section 805 shall terminate—

(1) at the close of the fifth anniversary of the effective date of this title; or

(2) at the close of the first, second, third, or fourth anniversary of the effective date of this title, unless the President, before each such anniversary, submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (in writing and together with the reasons therefor) an affirmative annual determination described in subsection (b).

(b)(1) An affirmative annual determination is a determination by the President that—

(A) the major companies of the steel industry, taken as a whole, have, during the 12-month period ending at the close of an anniversary referred to in subsection (a)(2)—

(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of workers; and

(ii) taken sufficient action to maintain their international competitiveness, including action to produce price-competitive and quality-competitive products, to control costs of production, including employment costs, and to improve productivity; and

(B) each of the major companies committed for the applicable 12-month period not less than 1 percent of net cash flow to the retraining of workers; except that this requirement may be waived by the President with respect to a major company in noncompliance, if he finds unusual economic circumstances exist with respect to that company; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

(2) For purposes of this subsection—

(A) the term "major company" means an enterprise whose raw steel production in the United States during 1983 exceeded 1,500,000 net tons.

(B) The term "net cash flow" means annual net (after-tax) income plus depreciation, depletion allowances, amortization, and changes in reserves minus dividends and payments on short-term and long-term debts and liabilities.

(3) For purposes of carrying out this subsection, the President shall take into account such information as may be available from the United States International Trade Commission and other appropriate sources relating to the modernization efforts of the steel industry.

SEC. 807. DEPARTMENT OF LABOR WORKER ASSISTANCE PLAN.

Within 6 months after the effective date of this title, the Secretary of Labor shall prepare (in consultation with the Steel Advisory Committee established on November 3, 1983, by the Secretary of Commerce and the Secretary of Labor (48 F.R. 51165)) and submit to the Congress a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products; which assistance shall include retraining and relocation for former workers in the steel industry who will likely be unable to return to employment in that industry. The plan required under this section shall be based upon existing authorities for providing such assistance, but shall be accompanied by such recommendations for additional statutory authority as the Secretary of Labor considers necessary to carry out the purposes of the plan.

SEC. 808. EFFECTIVE DATE.

This title shall take effect on October 1, 1984.

C. NATIONAL SECURITY IMPORT RESTRICTIONS

1. Sections 232 and 233 of Trade Expansion Act of 1962, as amended

[19 U.S.C. 1862, 1864; P.L. 87-794, as amended by P.L. 93-618, Reorganization Plan No. 3 of 1979, P.L. 96-223, P.L. 99-64 and P.L. 100-418]

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b)(1)(A) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce (hereafter in the section referred to as the "Secretary") shall immediately initiate an appropriate investigation to determine the effects of the national security of imports of the article which is the subject of such request, application, or motion.

(B) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this section.

(2)(A) In the course of any investigation conducted under this subsection, the Secretary shall—

(i) consult with the Secretary of Defense regarding the methodological and policy questions raised in any investigation initiated under paragraph (1),

(ii) seek information and advice from, and consult with, appropriate officers of the United States, and

(iii) if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation.

(B) Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary an assessment of the defense requirements of any article that is the subject of an investigation conducted under this section.

(3)(A) By no later than the date that is 270 days after the date on which an investigation is initiated under paragraph (1) with respect to any article, the Secretary shall submit to the President a report on the findings of such investigation with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, the recommendations of the Secretary for action or inaction under this section. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in such report.

(B) Any portion of the report submitted by the Secretary under subparagraph (A) which does not contain classified information or proprietary information shall be published in the Federal Register.

(4) The Secretary shall prescribe such procedural regulations as may be necessary to carry out the provisions of this subsection.

(c)(1)(A) Within 90 days after receiving a report submitted under subsection (b)(3)(A) in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall—

(i) determine whether the President concurs with the finding of the Secretary, and

(ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.

(B) If the President determines under subparagraph (A) to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action under subparagraph (A).

(2) By no later than the date that is 30 days after the date on which the President makes any determinations under paragraph (1), the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action, under paragraph (1). Such statement shall be included in the report published under subsection (e).

(3)(A) If—

(i) the action taken by the President under paragraph (1) is the negotiation of an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security, and

(ii) either—

(I) no such agreement is entered into before the date that is 180 days after the date on which the President makes the determination under paragraph (1)(A) to take such action, or

(II) such an agreement that has been entered into is not being carried out or is ineffective in eliminating the threat to the national security posed by imports of such article,

the President shall take such other actions as the President deems necessary to adjust the imports of such article so that such imports will not threaten to impair the national security. The President shall publish in the Federal Register notice of any additional actions being taken under this section by reason of this subparagraph.

(B) If—

(i) clauses (i) and (ii) of subparagraph (A) apply, and

(ii) the President determines not to take any additional actions under this subsection,

the President shall publish in the Federal Register such determination and the reasons on which such determination is based.

(d) For the purposes of this section, the Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(e)(1) Upon the disposition of each request, application, or motion under subsection (b), the Secretary shall submit to the Congress, and publish in the Federal Register, a report on such disposition.

(2) The President shall submit to the Congress an annual report on the operation of the provisions of this section.

(f)(1) An action taken by the President under subsection (c) to adjust imports of petroleum, or petroleum products shall cease to have force and effect upon the enactment of a disapproval resolution, provided for in paragraph (2), relating to that action.

(2)(A) This paragraph is enacted by the Congress—

(i) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(B) For purposes of this subsection, the term "disapproval resolution" means only a joint resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress disapproves the action taken under section 232 of the Trade Expansion Act of 1962 with respect to petroleum imports under ———— dated ————.", the first blank space being filled with the number of the proclamation, Executive order, or other Executive act issued under the authority of subsection (c) of such section 232 for purposes of adjusting imports of petroleum or petroleum products and the second blank being filled with the appropriate date.

(C)(i) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Finance.

(ii) No amendment to a disapproval resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this clause shall be in order in either House nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this clause by unanimous consent.

SEC. 233. IMPORT SANCTIONS FOR EXPORT VIOLATIONS.

Any person who violates any national security export control imposed under section 5 of the Export Administration Act of 1979 (50 U.S.C. App. 2404), or any regulation, order, or license issued under that section, may be subject to such controls on the importing of goods or technology into the United States as the President may prescribe.

2. Sections 1501 (c) and (d) of the Omnibus Trade and Competitiveness Act of 1988

[P.L. 100–418]

SEC. 1501.

(c) Enforcement of Machine Tool Import Arrangements.—

(1) The Secretary of Commerce is authorized to request the Secretary of the Treasury to carry out such action as may be necessary or appropriate to ensure the attainment of the objectives of the machine tool decision of the President on May 20, 1986, and to enforce any quantitative limitation, restriction, or other terms contained in related bilateral arrangements. Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of assembled and unassembled machine tool products.

(2) For purposes of this subsection, the term "related bilateral arrangement" means any arrangement, agreement, or understanding entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of assembled and unassembled machine tool products as may be necessary to implement such machine tool decision of May 20, 1986.

(d) Application of Amendments.—

(1) Except as otherwise provided under this subsection, the amendments made by this section shall apply with respect to investigations initiated under section 232(b) of the Trade Expansion Act of 1962 on or after the date of enactment of this Act.

(2) The provisions of subsection (c) of section 232 of the Trade Expansion Act of 1962, as amended by this section, shall apply with respect to any report submitted by the Secretary of Commerce to the President under section 232(b) of such Act after the date of enactment of this Act.

(3) By no later than the date that is 90 days after the date of enactment of this Act, the President shall make the determinations described in section 232(c)(1)(A) of the Trade Expansion Act of 1962, as amended by this section, with respect to any report—

(A) which was submitted by the Secretary of Commerce to the President under section 232(b) of such Act before the date of enactment of this Act, and

(B) with respect to which no action has been taken by the President before the date of enactment of this Act.

D. BALANCE OF PAYMENTS AUTHORITY

Section 122 of Trade Act of 1974

[19 U.S.C. 2132; P.L. 93–618]

SEC. 122. BALANCE-OF-PAYMENTS AUTHORITY.

(a) Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas and a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) and (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 161(a) and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insur-

ance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets,

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d)(1) Import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of nondiscriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustment procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place or quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period which the President determines is representative of imports of such article, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) No provision of law authorizing the termination of tariff concessions shall be used to impose a surcharge on imports into the United States.

E. PRODUCT STANDARDS

Implementation of the GATT Agreement on Technical Barriers to Trade

Title IV of Trade Agreements Act of 1979

[19 U.S.C. 2531; P.L. 96–39]

Subtitle A—Obligations of the United States

SEC. 401. CERTAIN STANDARDS-RELATED ACTIVITIES.

Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

SEC. 402. FEDERAL STANDARDS-RELATED ACTIVITIES.

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

(1) NONDISCRIMINATORY TREATMENT.—Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—

(A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

(A) In general.—Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) Application of requirement.—For purposes of this paragraph, the following apply:

(i) International standards not appropriate.—The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(I) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) Regional standards.—In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 451(6)(A)(ii).

(3) Performance criteria.—Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) Certification access for foreign suppliers.—Each Federal agency shall, with respect to any certification system used by it, permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

SEC. 403. STATE AND PRIVATE STANDARDS-RELATED ACTIVITIES.

(a) In General.—It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) Presidential Action.—The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 402, and of procedures that provide for notification, participation, and publication with respect to such activities.

Subtitle B—Functions of Federal Agencies

(a) In General.—The Special Representative shall coordinate the consideration of international trade policy issues that arise as a

result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) NEGOTIATING FUNCTIONS.—The Special Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Special Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) CROSS REFERENCE.—For provisions of law regarding general authority of the Special Representative with respect to trade agreements, see section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Special Representative with respect to international standard-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c).

(b) REPRESENTATION OF UNITED STATES INTERESTS BY PRIVATE PERSONS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION MEMBER.—The term "organization member" means the private person who holds membership in a private international standards organization.

(B) PRIVATE INTERNATIONAL STANDARDS ORGANIZATION.—The term "private international standards organization" means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purposes.

(2) In general.—Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) Inadequate representation.—If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member concerned. During any such inquiry, the Secretary concerned may solicit and consider the advice of the appropriate representatives referred to in section 417.

(4) Action by organization member.—If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) Action by secretary concerned.—If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) Representation of United States Interests by Federal Agencies.—With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purposes, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

SEC. 414. STANDARDS INFORMATION CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) FUNCTIONS.—The standards information center shall—

(1) serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities, whether such standards, systems, or activities are public or private, domestic or foreign, or international, regional, national, or local;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information.

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 412(a)(2) within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 412 as may be requested by those offices in carrying out their functions.

SEC. 415. CONTRACTS AND GRANTS.

(a) IN GENERAL.—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) TERMS AND CONDITIONS.—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the Special Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) LIMITATIONS.—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Special Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) AUDIT.—Each recipient of a grant or contract under this section shall make available to the Special Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

SEC. 416. TECHNICAL ASSISTANCE.

The Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.

In carrying out the functions for which responsible under this title, the Special Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C—Administrative and Judicial Proceedings Regarding Standards-Related Activities

CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

SEC. 421. RIGHT OF ACTION UNDER THIS CHAPTER.

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United

States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

SEC. 422. REPRESENTATIONS.

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Special Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Special Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Special Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.

(a) Review.—Upon receipt of any representation made under section 422, the Special Representative shall review the issues concerned in consultation with—

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) Resolution.—The Special Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.

(a) In General.—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) Cross Reference.—For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Special Representative finds, and informs the agency concerned in writing, that—

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) EXEMPTIONS.—This section does not apply with respect to causes of action arising under—

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or appeal of a rule.

SEC. 442. NOT CAUSE FOR STAY IN CERTAIN CIRCUMSTANCES.

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

Subtitle D—Definitions and Miscellaneous Provisions

SEC. 451. DEFINITIONS.

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

(2) CERTIFICATION SYSTEM.—The term "certification system" means a system—

(A) for determining whether a product conforms with product standards applicable to that product; and

(B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system.

(3) FEDERAL AGENCY.—The term "Federal agency" means any of the following within the meaning of chapter 2 of part I of title 5, United States Code:

(A) Any executive department.

(B) Any military department.

(C) Any Government corporation.

(D) Any Government-controlled corporation.

(E) Any independent establishment.

(4) INTERNATIONAL CERTIFICATION SYSTEM.—The term "international certification system" means a certification system that is adopted by an international standards organization.

(5) INTERNATIONAL STANDARD.—The term "international standard" means any standard that is promulgated by an international standards organization.

(6) INTERNATIONAL STANDARDS ORGANIZATION.—The term "international standards organization" means any organization—

(A) the membership of which is open to representatives, whether public or private, of the United States and—

(i) all Parties to the Agreement, or

(ii) some but not all Parties of the Agreement; and

(B) that is engaged in international standards-related activities.

(7) INTERNATIONAL STANDARDS-RELATED ACTIVITY.—The term "international standards-related activity" means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international certification system, or both.

(8) PARTY TO THE AGREEMENT.—The term "Party to the Agreement" means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.

(9) PRIVATE PERSON.—The term "private person" means—

(A) any individual who is a citizen or national of the United States; and

(B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) PRODUCT.—The term "product" means any natural or manufactured item.

(11) SECRETARY CONCERNED.—The term "Secretary concerned" means the Secretary of Commerce with respect to functions under this title relating to nonagricultural products, and the Secretary of Agriculture with respect to functions under this title relating to agricultural products.

(12) SPECIAL REPRESENTATIVE.—The term "Special Representative" means the Special Representative for Trade Negotiations.

(13) STANDARD.—The term "standard" means any of the following, and any amendment or change to any of the following:

(A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B),

(14) STANDARDS-RELATED ACTIVITY.—The term "standards-related activity" means the development, adoption, or application of any standard or any certification system.

(15) STATE.—The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) STATE AGENCY.—The term "State agency" means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) UNITED STATES.—The term "United States", when used in a geographical context, means all States.

SEC. 452. EXEMPTIONS UNDER TITLE.

This title does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the Special Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

SEC. 454. EFFECTIVE DATE.

This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.

F. GOVERNMENT PROCUREMENT

Buy American Act (Title III of Act of March 3, 1933)

[41 U.S.C. 10a–c; P.L. 72–428, as amended by P.L. 100–418]

SECTION 1. [41 U.S.C. 10c. DEFINITION OF TERMS USED IN SECTIONS 10a AND 10b.]

That when used in this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands;

(c) The term "Federal agency" has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472), which includes the Departments of the Army, Navy, and Air Force.

SEC. 2. [41 U.S.C. 10a. AMERICAN MATERIALS REQUIRED FOR PUBLIC USE.]

Notwithstanding any other provision of law, and unless the head of the Federal agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, or supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies [of the class or kind to be used or the articles, materials, or supplies] from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

SEC. 3. [41 U.S.C. 10b. CONTRACTS FOR PUBLIC WORKS; SPECIFICATION FOR USE OF AMERICAN MATERIALS; BLACKLISTING CONTRACTORS VIOLATING REQUIREMENTS.]

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: *Provided, however,* That if the head of the Federal agency making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a Federal agency which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

SEC. 4. (a) A Federal agency shall not award any contract—

(1) for the procurement of an article, material, or supply mined, produced, or manufactured—

(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 305(f)(3)(A) of the Trade Agreements Act of 1979; or

(B) in a foreign country whose government maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of such Act; or

(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 305(f)(3)(A) or 305(g)(1)(A) of such Act, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

(b) The prohibition on procurement in subsection (a) is subject to sections 305(h) and 305(j) of such Act and shall not apply—

(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

(2) notwithstanding section 305(g) of such Act, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 305(f)(3)(A) of such Act; or

(3) notwithstanding section 305(g) of such Act, to a country that is a least developed country (as that term is defined in section 308(6) of that Act).

(c) Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

(1) determines that such action is necessary—

(A) in the public interest;

(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies or requisite quality at competitive prices; and

(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

(d) The authority of the head of a Federal agency under subsection (c) shall not apply to contracts subject to memorandums of understanding entered into by the Department of Defense (or any military department) and a representative of a foreign country (or agency or instrumentality thereof). In the case of any such contracts, any determinations and notice required by subsection (c) shall be made by—

(1) the President, or

(2) if delegated, by the Secretary of Defense or the Secretary of the Army, Navy, or Air Force, subject to review and policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)).

(e) The authority of the head of a Federal agency under subsectiodn (c) or (d) of this section may not be delegated.

(f) Nothing in this section shall restrict the application of the prohibition under section 302(a)(1) of the Trade Agreements Act of 1979.

(g)(1) For purposes of this section with respect to construction services, a contractor or subcontractor is owned or controlled directly or indirectly by citizens or nationals of a foreign country if—

(A) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(B) the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

(C) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(D) in the case of a corporation—

(i) the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or

(ii) the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(E) in the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

(2)(A) For purposes of this section, except as provided in paragraph (1), a determination of whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country shall be made in accordance with policy guidance prescribed by the Administrator for Federal Procurement Policy after conducting one or more public hearings at which interested parties may present comments. Sections 556 and 557 of title 5, United States Code, shall not apply to the conduct of any such hearing.

(B) The Administrator shall include in the policy guidance prescribed under subparagraph (A) definitions, procedures, standards, and rules that, to the extent the Administrator considers appropriate and consistent with the applicability of such policy guidance to all services (other than construction services), is the same as or similar to the definitions, procedures, standards, and rules that the Administrator has developed and issued for the administration of section 109 of the Treasury, Postal Service, and General Government Appropriations Act, 1988 (101 Stat. 1329-434).

(C) The policy guidance required by subparagraph (A) shall be prescribed not later than 180 days after the date of enactment of this subsection.

(3)(A) The Administrator for Federal Procurement Policy shall conduct an assessment of the current rules under this Act for making determinations of country of origin and alternatives to such rules. Such assessment shall identify and evaluate (i) reasonable alternatives to such rules of origin, including one or more alternative rules that require a determination on the basis of total cost, and (ii) the specific cost factors that should be included in determining total cost.

(B) In conducting the analysis, the Administrator shall consult and seek comment from representatives of United States labor and business, other interested United States persons, and other Federal agencies. The Administrator shall hold public hearings for the purpose of obtaining such comment, and a transcript of such hearings shall be appended to the report required by subparagraph (C).

(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after the date of enactment of this subsection. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.

(h) As used in this section—

(1) the term "Agreement" means the Agreement on Government Procurement as defined in section 308(1) of the Trade Agreements Act of 1979;

(2) the term "signatory" means a party to the Agreement; and

(3) the term "eligible product" has the meaning given such term by section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)).

SEC. 5. This title shall take effect on the date of its enactment, but shall not apply to any contract entered into prior to such effective date.

SEC. 6. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.

[Section 7004 of the Omnibus Trade and Competitiveness Act of 1988 establishes a sunset on new section 4 and the comforming amendments made to the Buy American Act and Act of October 29, 1949 made by title VII of the 1988 Act:

[SEC. 7004. SUNSET PROVISION.

[The amendments made by this title shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979, and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.]

Act of October 29, 1949

[41 U.S.C 10d; P.L. 81-434, as amended by P.L. 100-418]

SEC. 633. [41 U.S.C. 10d. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING SECTIONS 10a AND 10b(a).]

In order to clarify the original intent of Congress, hereafter, section 2 and that part of section 3 (a) preceding the words "*Provided, however,*" of title III of the Act of March 3, 1933 (47 Stat. 1520), shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

EXECUTIVE ORDER NO. 10582

[Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617]

UNIFORM PROCEDURES FOR DETERMINATIONS

SECTION 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [sections 10a—10c of this title], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than $25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302 (b) of the Federal Property and Administrative Services Act of 1949, as amended [section 252 (b) of this title], section 2 (b) of the Armed Services Procurement Act of 1947, as amended [former section 151 (b) of this title], and section 202 of the Small Business Act of 1953 [section 631 of Title 15]; or

(c) To reject a bid or offer to furnish materials of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts:

Provided, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

Sec. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

Sec. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

DWIGHT D. EISENHOWER.

Implementation of the GATT Agreement on Government Procurement

Title III of Trade Agreements Act of 1979, as amended

[19 U.S.C. 2511; P.L. 96-39, as amended by Reorganization Plan No. 3 of 1979, P.L. 99-47, P.L. 100-418, and 100-449]

SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS.

(a) PRESIDENTAL WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS.—The President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) DESIGNATION OF ELIGIBLE COUNTRIES AND INSTRUMENTALITIES.—The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) MODIFICATION OR WITHDRAWAL OF WAIVERS AND DESIGNATIONS.—The President may modify or withdraw any waiver granted pursuant to subsection (a) or designation made pursuant to subsection (b).

(d) LIMITATIONS ON WAIVER AUTHORITY NOT EFFECTIVE UNLESS PROVISION AMENDED.—The authority of the President under subsection (a) to waive any laws, regulations, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.

SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.

(a) AUTHORITY TO BAR PROCUREMENT FROM NON-DESIGNATED COUNTRIES.—With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which would otherwise be eligible products; and

(2) may take such other actions within his authority as he deems necessary.

(d) DEFERRALS AND WAIVERS.—Notwithstanding subsection (a), but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1), of products of a foreign country or instrumentality which is not designated pursuant to section 301(b), except that no such delay shall be granted with respect to the procurement of products of any major industrial country;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization es-

tablished under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)), such prohibition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

(c) Report on Impact of Restrictions.—

(1) Impact of the economy.—On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity.—The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 304 (a) and (b), other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation.—In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 135 of the Trade Act of 1974.

(d) Proposed Action.—

(1) Presidential report.—On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) a report which describes the actions he deems appropriate to establish reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure.—

(A) Presidential determination.—If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the

Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) CONGRESSIONAL CONSIDERATION.—The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

SEC. 303. WAIVER OF DISCRIMINATORY PURCHASING REQUIREMENTS WITH RESPECT TO PURCHASES OF CIVIL AIRCRAFT.

The President may waive the application of the provisions of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), popularly referred to as the Buy American Act, in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft. The President may modify or withdraw any waiver granted pursuant to this section.

SEC. 304. EXPANSION OF THE COVERAGE OF THE AGREEMENT.

(a) OVERALL NEGOTIATING OBJECTIVE.—The President shall seek in the renegotiations provided for in part IX, paragraph 6, of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and nondiscriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 306(a).

(b) SECTOR NEGOTIATING OBJECTIVES.—The President shall seek, consistent with the overall objective set forth in subsection (a) and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) INDEPENDENT VERIFICATION OBJECTIVE.—The President shall seek to establish in the renegotiation provided for in part IX, paragraph 6, of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to part VI, paragraph 9, of the Agreement.

(d) REPORTS ON NEGOTIATIONS.—

(1) REPORT IN THE EVENT OF INADEQUATE PROGRESS.—If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve

months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entitles of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 302(c)(1). Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 302(c), the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) LEGISLATIVE RECOMMENDATIONS.—Taking into account the factors required to be analyzed under section 302(c), the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) ANNUAL REPORTS.—Each annual report of the President under section 163(a) of the Trade Act of 1974 made after the date of enactment of this Act shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) EXTENSION OF NONDISCRIMINATION AND NATIONAL TREATMENT.—Before exercising the waiver authority in section 301 for procurement not covered by the Agreement on the date of enactment of this Act, the President shall follow the consultation provisions of section 135 and chapter 6 of title I of the Trade Act of 1974 for private sector and congressional consultations.

SEC. 305. MONITORING AND ENFORCEMENT.

(a) MONITORING AND ENFORCEMENT STRUCTURE RECOMMENDATIONS.—In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this title, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 301(b).

(b) RULES OF ORIGIN.—

(1) ADVISORY RULINGS AND FINAL DETERMINATIONS.—For the purposes of this title, and Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 308(4)(B), and article is or would be a product of a foreign country or instrumentality designated pursuant to section 301(b).

(2) PENALTIES FOR FRAUDULENT CONDUCT.—In addition to any other provisions of law which may be applicable, section 1001 of title 18, United States Code, shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 301 or avoiding a prohibition under section 302.

(c) REPORT TO CONGRESS ON RULES OF ORIGIN.—

(1) Domestic administrative practices.—As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 301(a) first takes effect, the President shall prepare and transmit to Congress a report containing an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) Foreign administrative practices.—The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(d) Annual Report on Foreign Discrimination.—

(1) Annual report required.—The President shall, no later than April 30, 1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

(2) Identifications required.—In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3)) any countries, other than least developed countries, that—

(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and presistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—

(i) use sole-sourcing or otherwise non-competitive procedures for procurements that could have been conducted using competitive procedures;

(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement's value threshold or to make the procurements less attractive to United States businesses;

(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

(C) use any other additional criteria deemed appropriate.

(4) CONTENTS OF REPORTS.—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

(B) an identification of the United States products or services that are affected by the non-compliance or discrimination;

(C) an analysis of the impact of the non-compliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

(5) INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and from United States businesses in the United States and in countries that are sig-

natories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

(6) IMPACT OF NONCOMPLIANCE.—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which such non-compliance or discrimination has impeded the ability of United States suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

(7) IMPACT ON PROCUREMENT COSTS.—Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1), the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the country is identified as discriminatory pursuant to section 305(d)(1) in the preceding annual report.

(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF THE AGREEMENT.—

(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1), a signatory country identified pursuant to subsection (d)(1)(A) has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under section 305(d)(1) as not in compliance in a preceding annual report.

(2) SETTLEMENT OF DISPUTES.—If, before the end of a year following the initiation of dispute settlement procedures—

(A) the other participant to the dispute settlement procedures has complied with the Agreement,

(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

(C) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

(3) SANCTIONS AFTER FAILURE OF DISPUTE RESOLUTION.—If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country

has not met the requirements of paragraph (2)(A) or (2)(B), then—

(A) from the end of such one year period, such signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 4 of the Act of March 3, 1933, shall apply to such country; and

(B) on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 301(a) of this Act.

(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with Agreement by that signatory country—

(A) withhold the imposition of either (but not both) of such sanctions;

(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

(C) take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.

(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 301(a) of this Act, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

(A) the signatory country has complied with the Agreement;

(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1), a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period—

(A) the President shall indentify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

(B) the prohibition on procurement contained in section 4 of the Act of March 3, 1933, shall apply to such country.

(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2) (B) or (C).

(h) LIMITATIONS ON IMPOSING SANCTIONS.—

(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 and the advice of United States businesses and other interested parties.

(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98-369; 98 Stat. 1175).

(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

(1) NOTICES REQUIRED.—A notice shall be published in the Federal Register on the date of any action under this section, describing—

(A) the results of dispute settlement proceedings under subsection (f)(2);

(B) any sanction imposed under subsection (f)(3) or (g)(1);

(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2); and

(D) the termination of any sanction under subsection (f)(5) or (g)(3).

(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsec-

tion (f)(5) or (g)(3) shall include a copy of the President's determination under such subsection.

(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

(1) ADVICE TO THE CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

(2) CONTENTS OF REPORT.—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

(3) LEGISLATIVE RECOMMENDATIONS.—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.

[Section 7004 of the Omnibus Trade and Competitiveness Act of 1988 provides a sunset on section 305(d) (i.e., the amendments made by Title VII of that Act):

> [The amendments made by this title shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979, and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.]

SEC. 306. LABOR SURPLUS AREA STUDIES.

(a) EFFECT ON THE ECONOMY.—Prior to the renegotiations provided for in part IX, paragraph 6, of the Agreement, the President shall prepare and transmit to the Congress a report which assesses the economic impact, including the impact on employment in various regions of the United States, of the waiver of the provisions of title II of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act, in the procurement of products produced in labor surplus areas and of the waiver of procurement set-asides for labor surplus areas.

(b) EFFECT ON TARGETS.—On or before July 1, 1981, the President shall prepare and transmit to the Congress a report which assesses the effect of the waiver of the provisions of such title III in the procurement of products produced in labor surplus areas and the waiver of procurement set-asides for labor surplus areas on the fulfillment of the objectives of Executive Order 12073, issued August 16, 1978, relating to the encouragement of procurement in labor surplus areas, including an assessment of such waiver on the procurement targets set by the Administrator of the General Services Administration pursuant to such Executive order. On or before January 1, 1980, the President shall begin consultation with and provide interim reports to the congressional committees referred to in section 302(c)(1) concerning the report required by the preceding sentence.

SEC. 307. AVAILABILITY OF INFORMATION TO CONGRESSIONAL ADVISERS.

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 161 of the Trade Act of 1974 information compiled by the Committee on Government Procurement under part VI, paragraph 9, of the Agreement.

SEC. 308. DEFINITIONS.

As used in this title—

(1) AGREEMENT.—The term "Agreement" means the agreement on Government Procurement referred to in section 2(c) of this Act, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) CIVIL AIRCRAFT.—The term "civil aircraft and related articles" means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts of the components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and compnents thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) DEVELOPED COUNTRIES.—The term "developed countries" means countries so designated by the President.

(4) ELIGIBLE PRODUCTS.—

(A) IN GENERAL.—The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.

(B) RULE OF ORIGIN.—An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-ISRAEL FREE TRADE AREA PROVISIONS.—The term "eligible product" includes a product or service of Israel having a contract value of $50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.

(D) LOWERED THRESHOLD FOR CERTAIN PRODUCTS AS A CONSEQUENCE OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.—Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term "eligible product" includes a product or service of Canada having a contract value of $25,000 or more that would be covered for procurement by the United States under the GATT Agreeement of Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.

(5) INSTRUMENTALITY.—The term "instrumentality" shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community

(6) LEAST DEVELOPED COUNTRY.—The term "least developed country" means any country on the United Nations General Assembly list of least developed countries.

(7) MAJOR INDUSTRIAL COUNTRY.—The term "major industrial country" means any country as defined in section 126 of the Trade Act of 1974 and any instrumentality of such a country.

SEC. 309. EFFECTIVE DATES.

The provisions of this title shall be effective on the date of enactment of this Act, except that—

(1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and

(2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.

Chapter 11: LAWS REGULATING EXPORT ACTIVITIES

A. EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED

[50 U.S.C. App. 2401, P.L. 96-72, as amended by P.L. 96-533, P.L. 97-145, P.L. 98-108, P.L. 98-207, P.L. 98-222, P.L. 99-64, P.L. 99-399, P.L. 99-633, P.L. 100-180, P.L. 100-418, and P.L. 100-449]

AN ACT To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1979".

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of the United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by earning foreign exchange, thereby contributing favorably to the trade balance. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, consistent with the economic, security, and foreign policy objectives of the United States.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can inhibit the efforts of United States business and work to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to a positive contribution to the balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(10) It is important that the administration of export controls imposed for foreign policy purposes give special emphasis to the need to control exports of goods and substances hazardous to the public health and the environment which are banned or severely restricted for use in the United States, and which, if exported, could affect the international reputation of the United States as a responsible trading partner.

(11) The acquisition of national security sensitive goods and technology by the Soviet Union and other countries the actions or policies of which run counter to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities. This enhancement poses a threat to the security of the United States, its allies, and other friendly nations, and places additional demands on the defense budget of the United States.

(12) Availability to controlled countries of goods and technology from foreign sources is a fundamental concern of the United States and should be eliminated through negotiations and other appropriate means whenever possible.

(13) Excessive dependence of the United States, it allies, or countries sharing common strategic objectives with the United States, on energy and other critical resources from potential adversaries can be harmful to the mutual and individual security of all those countries.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade

has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and;

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restric-

tions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable and prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing export controls. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments, or common strategic objectives, and to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(12) It is the policy of the United States to sustain vigorous scientific enterprise. To do so involves sustaining the ability of scientists and other scholars freely to communicate research findings, in accordance with applicable provisions of law, by means of publication, teaching, conferences, and other forms of scholarly exchange.

(13) It is the policy of the United States to control the export of goods and substances banned or severely restricted for use in the United States in order to foster public health and safety and to prevent injury to the foreign policy of the United States as well as to the credibility of the United States as a responsible trading partner.

(14) It is the policy of the United States to cooperate with countries which are allies of the United States and countries which share common strategic objectives with the United States in minimizing dependence on imports of energy and

other critical resources from potential adversaries and in developing alternative supplies of such resources in order to minimize strategic threats posed by excessive hard currency earnings derived from such resource exports by countries with policies adverse to the security interests of the United States.

(15) It is the policy of the United States, particularly in light of the Soviet massacre of innocent men, women, and children aboard Korean Air Lines flight 7, to continue to object to exceptions to the International Control List for the Union of Soviet Socialist Republics, subject to periodic review by the President.

GENERAL PROVISIONS

SEC. 4. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act, the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) Validated licenses authorizing multiple exports, issued pursuant to an application by the exporter, in lieu of an individual validated license for each such export, including, but not limited to, the following:

(A) A distribution license, authorizing exports of goods to approved distributors or users of the goods in countries other than controlled countries, except that the Secretary may establish a type of distribution license appropriate for consignees in the People's Republic of China. The Secretary shall grant the distribution license primarily on the basis of the reliability of the applicant and foreign consignees with respect to the prevention of diversion of goods to controlled countries. The Secretary shall have the responsibility of determining, with the assistance of all appropriate agencies, the reliability of applicants and their immediate consignees. The Secretary's determination shall be based on appropriate investigations of each applicant and periodic reviews of licensees and their compliance with the terms of licenses issued under this Act. Factors such as the applicant's products or volume of business, or the consignees' geographic location, sales distribution area, or degree of foreign ownership, which may be relevant with respect to individual cases, shall not be determinative in creating categories or general criteria for the denial of applications or withdrawal of a distribution license.

(B) A comphrehensive operations license, authorizing exports and reexports of technology and related goods, including items from the list of militarily critical technologies developed pursuant to section 5(d) of this Act which are included on the control list in accordance with that section, from a domestic concern to and among its foreign subsidiaries, affiliates, joint ventures, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries (except the People's Republic of China), and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) Control List.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

(c) Foreign Availability.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources the United States in sufficient quantities and comparable in quality to those produced in the United States, so as to render the controls ineffective in achieving their purposes unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.

(d) Right of Export.—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) Delegation of Authority.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) Notification of the Public; Consultation With Business.—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

(g) Fees.—No fee may be charged in connection with the submission or processing of an export license application.

NATIONAL SECURITY CONTROLS

Sec. 5. (a) Authority.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisons of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. For purposes of the preceding sentence, the term "affiliates" includes both governmental entities and commercial entities that are controlled in fact by controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take the effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States.

(4)(A) No authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States to any country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee, or pursuant to an agreement described in subsection (k) of this section. The Secretary may require any person reexporting any goods or technology under this subparagraph to notify the Secretary of such reexports.

(B) Notwithstanding subparagraph (A), the Secretary may require authority or permission to reexport the following:

(i) supercomputers;

(ii) goods or technology for sensitive nuclear uses (as defined by the Secretary);

(iii) devices for surreptitious interception of wire or oral communications; and

(iv) goods or technology intended for such end users as the Secretary may specify by regulation.

(5)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to reexport any goods or technology subject to the jurisdiction of the United States from any country when the goods or technology to be reexported are incorporated in another good and—

(i) the value of the controlled United States content of that other good is 25 percent or less of the total value of the good; or

(ii) the export of the goods or technology to a controlled country would require only notification of the participating governments of the Coordinating Committee.

For purposes of this paragraph, the "controlled United States content" of a good means those goods or technology subject to the jurisdiction of the United States which are incorporated in the good, if the export of those goods or technology from the United States to a country, at the time that the good is exported to that country, would require a validated license.

(B) The Secretary may by regulation provide that subparagraph (A) does not apply to the reexport of a supercomputer which contains goods or technology subject to the jurisdiction of the United States.

(6) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall issue regulations to carry out paragraphs (4) and (5). Such regulations shall define the term "supercomputer" for purposes of those paragraphs.

(b) Policy Toward Individual Countries.—(1) In administering export controls for national security purposes under this section, the President shall establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961, except that the President may add any country to or remove any country from such list of controlled countries if he determines that the export of goods or technology to such country would or would not (as the case may be) make a significant contribution to the military potential of such country or a combination of countries which would prove detrimental to the national security of the United States. In determining whether a country is added to or removed from the list of controlled countries, the President shall take into account—

(A) the extent to which the country's policies are adverse to the national security interests of the United States,

(B) the country's Communist or non-Communist status;

(C) the present and potential relationship of the country with the United States;

(D) the present and potential relationship of the country with countries friendly or hostile to the United States;

(E) the country's nuclear weapons capability and the country's compliance record with respect to multilateral nuclear weapons agreements to which the United States is a party; and

(F) such other factors as the President considers appropriate.

Nothing in the preceding sentence shall be interpreted to limit the authority of the President provided in this Act to prohibit or curtail the export of any goods or technology to any country to which exports are controlled for national security purposes other than countries on the list of controlled countries specified in this paragraph. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors set forth in this paragraph.

(2)(A) Except as provided in subparagraph (B), no authority or permission may be required under this section to export goods or technology to a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement to the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section, if the export of such goods or technology to the People's Republic of China or a controlled country on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee.

(B)(i) The Secretary may require a license for the export of goods or technology described in subparagraph (A) to such end users as the Secretary may specify by regulation.

(ii) The Secretary may require any person exporting goods or technology under this paragraph to notify the Secretary of those exports.

(C) The Secretary shall, within 3 months after the date of the enactment of the Export Enhancement Act of 1988, determine which countries referred to in subparagraph (A) are implementing an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(i) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(ii) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(iii) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(iv) a system of export control documentation to verify the movement of goods or technology; and

(v) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

The Secretary shall, at least once each year, review the determinations made under the preceding sentence with respect to all countries referred to in subparagraph (A). The Secretary may, as appropriate, add countries to, or remove countries from, the list of countries that are implementing an effective export control system in accordance with this subparagraph. No authority or permission to export may be required for the export of goods or technology to a country on such list.

(3)(A) No authority or permission may be required under this section to export to any country, other than a controlled country, any goods or technology if the export of the goods or technology to controlled countries would require only notification of the participating governments of the Coordinating Committee.

(B) The Secretary may require any person exporting any goods or technology under subparagraph (A) to notify the Secretary of those exports.

(c) CONTROL LIST.—(1) The Secretary shall establish and maintain, as part of the control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, as determined by the Secretary, the Secretary of Defense may, within 20 days after receiving notification of the Secretary's determination, refer the matter to the President for resolution. The Secretary of Defense shall notify the Secretary of any such referral. The President shall, not later than 20 days after such referral, notify the Secretary of his determination with respect to the inclusion of such items on the list. Failure of the Secretary of Defense to notify the President or the Secretary, or failure of the President to notify the Secretary, in accordance with this paragraph, shall be deemed by the Secretary to constitute concurrence in the implementation of the actions proposed to the Secretary regarding the inclusion of such items on the list.

(3) The Secretary shall conduct partial reviews of the list established pursuant to this subsection at least once each calendar quarter in order to carry out the policy set forth in section 3(2)(A) of this Act and the provisions of this section, and shall promptly make such revisions of the list as may be necessary after each such review. Before beginning each quarterly review, the Secretary shall publish notice of that review in the Federal Register. The Secretary shall provide a 30-day period during each review for comment and the submission of data, with or without oral presentation, by interested Government agencies and other affected or potentially affected parties. After consultation with appropriate Government agencies, the Secretary shall make a determination of any revisions in the list within 30 days after the end of the review period. The concurrence or approval of any other department or agency is not required before any such revision is made. The Secretary shall

publish in the Federal Register any revisions in the list, with an explanation of the reasons for the revisions. The Secretary shall use the data developed from each review in formulating United States proposals relating to multilateral export controls in the group known as the Coordinating Committee. The Secretary shall further assess, as part of each review, the availability from sources outside the United States of goods and technology comparable to those subject to export controls imposed under this section. All goods and technology on the list shall be reviewed at least once each year. The provisions of this paragraph apply to revisions in the list which consist of removing items from the list or making changes in categories of, or other specifications in, items on the list.

(4) The appropriate technical advisory committee appointed under subsection (h) of this section shall be consulted by the Secretary with respect to changes, pursuant to paragraph (2) or (3), in the list established pursuant to this subsection, and such technical advisory committee may submit recommendations to the Secretary with respect to such changes. The Secretary shall consider the recommendations of the technical advisory committee and shall inform the committee of the disposition of its recommendations.

(5)(A) Not later than 6 months after the date of the enactment of this paragraph, the following shall no longer be subject to export controls under this section:

(i) All goods or technology the export of which to controlled countries on the date of the enactment of the Export Enhancement Act of 1988 would require only notification of the participating governments of the Coordinating Committee, except for those goods or technology on which the Coordinating Committee agrees to maintain such notification requirement.

(ii) All medical instruments and equipment, subject to the provisions of subsection (m) of this section.

(B) The Secretary shall submit to the Congress annually a report setting forth the goods and technology from which export controls have been removed under this paragraph.

(6)(A) Notwithstanding subsection (f) or (h)(6) of this section, any export control imposed under this section which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this paragraph, or 6 months after the export control is imposed, whichever date is later, except that—

(i) any such export controls on those goods or technology for which a determination of the Secretary that there is no foreign availability has been made under subsection (f) or (h)(6) of this section before the end of the applicable 6-month period and is in effect may be renewed for periods of not more than 6 months each, and

(ii) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.

(B) Export controls on goods or technology described in clause (i) or (ii) of subparagraph (A) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

(7) Notwithstanding any other provision of this subsection, after 1 year has elapsed since the last review in the Federal Register on any item within a category on the control list the export of which to the People's Republic of China would require only notification of the members of the group known as the Coordinating Committee, an export license applicant may file an allegation with the Secretary that such item has not been so reviewed within such 1-year period. Within 90 days after receipt of such allegation, the Secretary—

(A) shall determine the truth of the allegation;

(B) shall, if the allegation is confirmed, commence and complete the review of the item; and

(C) shall, pursuant to such review, submit a finding for publication in the Federal Register.

In such finding, the Secretary shall identify those goods or technology which shall remain on the control list and those goods or technology which shall be removed from the control list. If such review and submission for publication are not completed within that 90-day period, the goods or technology encompassed by such item shall immediately be removed from the control list.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment,

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) keystone equipment which would reveal or give insight into the design and manufacture of a United States military system,

which are not possessed by, or available in fact from sources outside the United States to, controlled countries and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(4) The Secretary and the Secretary of Defense shall integrate items on the list of militarily critical technologies into the control list in accordance with the requirements of subsection (c) of this section. The integration of items on the list of militarily critical technologies into the control list shall proceed with all deliberate

speed. Any disagreement between the Secretary and the Secretary of Defense regarding the integration of an item on the list of militarily critical technologies into the control list shall be resolved by the President. Except in the case of a good or technology for which a validated license may be required under subsection (f)(4) or (h)(6) of this section, a good or technology shall be included on the control list only if the Secretary finds that controlled countries do not possess that good or technology, or a functionally equivalent good or technology, and the good or technology or functionally equivalent good or technology, is not available in fact to a controlled country from sources outside the United States in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such good or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section. The Secretary of Defense shall jointly submit a report to the Congress, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, on actions taken to carry out this paragraph. For the purposes of this paragraph, assessment of whether a good or technology is functionally equivalent shall include consideration of the factors described in subsection (f)(3) of this section.

(5) The Secretary of Defense shall establish a procedure for reviewing the goods and technology on the list of militarily critical technologies on an ongoing basis for the purpose of removing from the list of militarily critical technologies any goods or technology that are no longer militarily critical. The Secretary of Defense may add to the list of militarily critical technologies and good or technology that the Secretary of Defense determines is militarily critical, consistent with the provisions of paragraph (2) of this subsection. If the Secretary and the Secretary of Defense disagree as to whether any change in the list of militarily critical technologies by the addition or removal of a good or technology should also be made in the control list, consistent with the provisions of the fourth sentence of paragraph (4) of this subsection, the President shall resolve the disagreement.

(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls on the products of that technology and equipment.

(7) The Secretary of Defense shall, not later than 1 year after the date of the enactment of the Export Administration Amendments Act of 1985, report to the Congress on efforts by the Department of Defense to assess the impact that the transfer of goods or technology on the list of militarily critical technologies to controlled countries has had or will have on the military capabilities of those countries.

(e) Export Licenses.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of individual validated licenses.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties of such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) The Secretary, subject to the provisions of subsection (1) of this section, shall not require an individual validated export license for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that has been lawfully exported from the United States.

(4) The Secretary shall periodically review the procedures with respect to the multiple validated export licenses, taking appropriate action to increase their utilization by reducing qualification requirements or lowering minimum thresholds, to combine procedures which overlay, and to eliminate those procedures which appear to be of marginal utility.

(5) The export of goods subject to export controls under this section shall be eligible, at the discretion of the Secretary, for a distribution license and other licenses authorizing multiple exports of goods, in accordance with section 4(a)(2) of this Act. The export of technology and related goods subject to export controls under this section shall be eligible for a comprehensive operations license in accordance with section 4(a)(2)(B) of this Act.

(6) Any application for a license for the export to the People's Republic of China and any good on which export controls are in effect under this section, without regard to the technical specifications of the good, for the purpose of demonstration or exhibition at a trade show shall carry a presumption of approval if—

(A) the United States exporter retains title to the good during the entire period in which the good is in the People's Republic of China; and

(B) the exporter removes the good from the People's Republic of China no later than at the conclusion of the trade show.

(f) FOREIGN AVAILABILITY.—

(1) FOREIGN AVAILABILITY TO CONTROLLED COUNTRIES.—(A) The Secretary, in consultation with the Secretary of Defense and other appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any

goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to controlled countries from such sources in sufficient quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a controlled country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

(2) FOREIGN AVAILABILITY TO OTHER THAN CONTROLLED COUNTRIES.—(A) The Secretary shall review, on a continuing basis, the availability to countries other than controlled countries, from sources outside the United States, of any goods or technology the export of which requires a validated license under this section. If the Secretary determines, in accordance with procedures which the Secretary shall establish, that any goods or technology in sufficient quantity and of comparable quality are available in fact from sources outside the United States (other than availability under license from a country which maintains export controls on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section), the Secretary may not, after the determination is made and during

the period of such foreign availability, require a validated license for the export of such goods or technology to any country (other than a controlled country) to which the country from which the goods or technology is available does not place control on the export of such goods or technology. The requirement with respect to a validated license in the preceeding sentence shall not apply if the President determines that the absence of export controls under this section on the goods or technology would prove detrimental to the national security of the United States. In any case in which the President determines under this paragraph that export controls under this section must be maintained notwithstanding foreign availability the Secretary shall publish that determination, together with a concise statement of its basis and the estimated economic impact of the decision.

(B) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a country (other than a controlled country) and which meets all other requirements for such an application, if the Secretary determines that such goods or technology are available from foreign sources to that country under the criteria established in subparagraph (A), unless the President determines that approving the license application would prove detrimental to the national security of the United States. In any case in which the Secretary makes a determination of foreign availability under this subparagraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under subparagraph (A) with respect to such goods or technology is warranted.

(3) PROCEDURES FOR MAKING DETERMINATIONS.—(A) The Secretary shall make a foreign availability determination under paragraph (1) or (2) on the Secretary's own initiative or upon receipt of an allegation from an export license applicant that such availability exists. In making any such determination, the Secretary shall accept the representations of applicants made in writing and supported by reasonable evidence, unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In making determinations of foreign availability, the Secretary may consider such factors as cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, durability, quality of end products produced by the item proposed for export, and scale of production. For purposes of this subparagraph, "evidence" may include such items as foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts.

(B) In a case in which an allegation is received from an export license applicant, the Secretary shall, upon receipt of the allegation, submit for publication in the Federal Register notice of such receipt. Within 4 months after receipt of the allegation, the Secretary shall determine whether the foreign availability exists, and shall so notify the applicant. If the Secretary has determined that the foreign availability exists, the Secretary shall, upon making such determination, submit the determination for review to other departments and agencies as the Secretary considers appropriate. The Secretary's determination of foreign availability does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted. Not later than 1 month after the Secretary makes the determination, the Secretary shall respond in writing to the applicant and submit for publication in the Federal Register, that—

(i) the foreign availability does exist and—

(I) the requirement of a validated license has been removed,

(II) the President has determined that export controls under this section must be maintained notwithstanding the foreign availability and the applicable steps are being taken under paragraph (4), or

(III) in the case of a foreign availability determination under paragraph (1), the foreign availability determination will be submitted to a multilateral review process in accordance with the agreement of the Coordinating Committee for a period of not more than 4 months beginning on the date of the publication; or

(ii) the foreign availability does not exist.

In any case in which the submission for publication is not made within the time period specified in the preceding sentence, the Secretary may not thereafter require a license for the export of the goods or technology with respect to which the foreign availability allegation was made. In the case of a foreign availability determination under paragraph (1) to which clause (i)(III) applies, no license for such export may be required after the end of the 9-month period beginning on the date on which the allegation is received.

(4) NEGOTIATIONS TO ELIMINATE FOREIGN AVAILABILITY.—(A) In any case in which export controls are maintained under this section notwithstanding foreign availability, on account of a determination by the President that the absence of the controls would prove detrimental to the national security of the United States, the President shall actively pursue negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. No later than the commencement of such negotiations, the President shall notify in writing the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that he has begun such negotiations and why he believes it is important to national security that export controls on the goods or technology involved be maintained.

(B) If, within 6 months after the President's determination that export controls be maintained, the foreign availability has not been eliminated, the Secretary may not, after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export controls involved would prove detrimental to the national security of the United States. Whenever the President has reason to believe that goods or technology subject to export controls for national security purposes by the United States may become available from other countries to controlled countries and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(C) After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate or prevent foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(5) EXPEDITED LICENSES FOR ITEMS AVAILABLE TO COUNTRIES OTHER THAN CONTROLLED COUNTRIES.—(A) In any case in which the Secretary finds that any goods or technology from foreign sources is of similar quality to goods or technology the export of which requires a validated license under this section and is available to a country other than a controlled country without effective restrictions, the Secretary shall designate such goods or technology as eligible for export to such country under this paragraph.

(B) In the case of goods or technology designated under subparagraph (A), then 20 working days after the date of formal filing with the Secretary of an individual validated license application for the export of those goods or technology to an eligible country, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless the license has been denied by the Secretary on account of an inappropriate end user. The Secretary may extend the 20-day period provided in the preceding sentence for an additional period of 15 days if the Secretary requires additional time to consider the application and so notifies the applicant.

(C) The Secretary may make a foreign availability determination under subparagraph (A) on the Secretary's own initiative, upon receipt of an allegation from an export license applicant that such availability exists, or upon the submission of a certification by a technical advisory committee of appropriate jurisdiction that such availability exists. Upon receipt of such an allegation or certification, the Secretary shall publish notice of such allegation or certification in the Federal Register and shall make the foreign availability determination within 30 days after such receipt and publish the determination in the Federal Register. In the case of the failure of the Secretary to make and publish such determination within that 30-day period, the goods or technology involved shall be deemed to be designated as eligible for export to the country or countries involved, for purposes of subparagraph (B).

(D) The provisions of paragraphs (1), (2), (3), and (4) do not apply with respect to determinations of foreign availability under this paragraph.

(6) Office of foreign availability.—The Secretary shall establish in the Department of Commerce an Office of Foreign Availability, which shall be under the direction of the Under Secretary of Commerce for Export Administration. The Office shall be responsible for gathering and analyzing all the necessary information in order for the Secretary to make determinations of foreign availability under this Act. The Secretary shall make available to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the end of each 6-month period during a fiscal year information on the operations of the Office, and on improvements in the Government's ability to assess foreign availability, during that 6-month period, including information on the training of personnel, the use of computers, and the use of Commercial Service Officers of the United States and Foreign Commercial Service. Such information shall also include a description of representative determinations made under this Act during that 6-month period that foreign availability did or did not exist (as the case may be), together with an explanation of such determinations.

(7) Sharing of information.—Each department or agency of the United States, including any intelligence agency, and all contractors with any such department or agency, shall, upon the request of the Secretary and consistent with the protection of intelligence sources and methods, furnish information to the Office of Foreign Availability concerning foreign availability of goods and technology subject to export controls under this Act. Each such department or agency shall allow the Office of Foreign Availability access to any information from a laboratory or other facility within such department or agency.

(8) Removal of controls on less sophisticated goods or technology.—In any case in which the Secretary may not, pursuant to paragraph (1), (2), (3), or (4) of this subsection or paragraph (6) of subsection (h) of this section, require a validated license for the export of goods or technology, then the Secretary may not require a validated license for the export of any similar goods or technology whose function, technological approach, performance thresholds, and other attributes that form the basis for export controls under this section do not exceed the technical parameters of the goods or technology from which the validated license requirement is removed under the applicable paragraph.

(9) Notice of all foreign availability assessments.—Whenever the Secretary undertakes a foreign availability assessment under this subsection or subsection (h)(6), the Secretary shall publish notice of such assessment in the Federal Register.

(10) Availability defined.—For purposes of this subsection and subsections (f) and (h), the term "available in fact to con-

trolled countries" includes production or availability of any goods or technology in any country—

(A) from which the goods or technology is not restricted for export to any controlled country; or

(B) in which such export restrictions are determined by the Secretary to be ineffective.

For purposes of subparagraph (B), the mere inclusion of goods or technology on a list of goods or technology subject to bilateral or multilateral national security export controls shall not alone constitute credible evidence that a country provides an effective means of controlling the export of such goods or technology to controlled countries.

(g) INDEXING.—(1) In order to ensure that requirements for validated licenses and other licenses authorizing multiple exports are periodically removed as goods or technology subject to such requirements becomes obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology from such license requirements the anticipated needs of the military of controlled countries. Any such goods or technology which no longer meets the performance levels established by the regulations shall be removed from the list established pursuant to subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(2)(A) In carrying out this subsection, the Secretary shall conduct annual reviews of the performance levels of goods or technology—

(i) which are eligible for export under a distribution license,

(ii) below which exports to the People's Republic of China require only notification of the governments participating in the group known as the Coordinating Committee, and

(iii) below which no authority or permission to export may be required under subsection (b)(2) or (b)(3) of this section.

The Secretary shall make appropriate adjustments to such performance levels based on these reviews.

(B) In any case in which the Secretary receives a request which—

(i) is to revise the qualification requirements or minimum thresholds of any goods eligible for export under a distribution license, and

(ii) is made by an exporter of such goods, representatives of an industry which produces such goods, or a technical advisory committee established under subsection (h) of this section,

the Secretary, after consulting with other appropriate Government agencies and technical advisory committees established under section (h) of this section, shall determine whether to make such revision, or some other appropriate revision, in such qualification requirements or minimum thresholds. In making this determination, the Secretary shall take into account the availability of the goods from sources outside the United States. The Secretary shall make a determination on a request made under this subparagraph within 90 days after the date on which the request is filed. If the Secretary's determination pursuant to such a request is to make a revision, such revision shall be implemented within 120 days after the date on which the request is filed and shall be published in the Federal Register.

(h) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, the intelligence community, and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, (D) revisions of the control list (as provided in subsection (C)(4)), including proposed revisions of multilateral controls in which the United States participates, (E) the issuance of regulations, and (F) any other questions relating to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the

chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to controlled countries, from sources outside the United States, including countries which participate with the United States in multilateral exports controls, in sufficient quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, the technical advisory committee shall submit that certification to the Congress at the same time the certification is made to the Secretary, together with the documentation for the certification. The Secretary shall investigate the foreign availability so certified and, not later than 90 days after the certification is made, shall submit a report to the technical advisory committee and the Congress stating that—

(A) the Secretary has removed the requirement of a validated license for the export of the goods or technology, on account of the foreign availability,

(B) the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability, or

(C) the Secretary has determined on the basis of the investigation that the foreign availability does not exist.

To the extent necessary, the report may be submitted on a classified basis. In any case in which the Secretary has recommended to the President that negotiations be conducted to eliminate the foreign availability the President shall actively pursue such negotiations with the governments of the appropriate foreign countries. If, within 6 months after the Secretary submits such report to the Congress, the foreign availability has not been eliminated, the Secretary may not after the end of that 6-month period, require a validated license for the export of the goods or technology involved. The President may extend the 6-month period described in the preceding sentence for an additional period of 12 months if the President certifies to the Congress that the negotiations involved are progressing and that the absence of the export control involved would prove detrimental to the national security of the United States. After an agreement is reached with a country pursuant to negotiations under this paragraph to eliminate foreign availability of goods or technology, the Secretary may not require a validated license for the export of such goods or technology to that country.

(i) Multilateral Export Controls—Recognizing the ineffectiveness of unilateral controls and the importance of uniform enforcement measures to the effectiveness of multilateral controls, the President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Enhanced public understanding of the Committee's purpose and procedures, including publication of the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Periodic meetings of high-level representatives of participating governments for the purpose of coordinating export control policies and issuing policy guidance to the Committee.

(3) Strengthened legal basis for each government's export control system, including, as appropriate, increased penalties and statutes of limitations.

(4) Harmonization of export control documentation by the participating governments to verify the movement of goods and technology subject to controls by the Committee.

(5) Improved procedures for coordination and exchange of information concerning violations of the agreement of the Committee.

(6) Procedures for effective implementation of the agreement through uniform and consistent interpretations of export controls agreed to by the governments participating in the Committee.

(7) Coordination of national licensing and enforcement efforts by governments participating in the Committee, including sufficient technical expertise to assess the licensing status of exports and to ensure end-use verification.

(8) More effective procedures for enforcing export controls, including adequate training, resources, and authority for enforcement officers to investigate and prevent illegal exports.

(9) Agreement to provide adequate resources to enhance the functioning of individual national export control systems and of the Committee.

(10) Improved enforcement and compliance with the agreement through elimination of unnecessary export controls and maintenance of an effective control list.

(11) Agreement to enhance cooperation among members of the Committee in obtaining the agreement of governments outside the Committee to restrict the export of goods and technology on the International Control List, to establish an ongoing mechanism in the Committee to coordinate planning and implementation of export control measures related to such agreements, and to remove items from the International Control List if such items continue to be available to controlled countries or if the control of the items no longer serves the common strategic objectives of the members of the Committee.

For purposes of reviews of the International Control List, the President may include as advisors to the United States delegation to the Committee representatives of industry who are knowledgeable with respect to the items being reviewed.

(j) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into an agreement with any agency of the government of a controlled country, that calls for the encouragement of technical cooperation and that is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report to the Secretary the agreement with such agency in sufficient detail.

(2) The provisions of paragraph (1) shall not apply to colleages, universities, or other educational institutions.

(k) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries, including those countries not participating in the group known as the Coordinating Committee, regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions. In cases where such negotiations produce agreements on export restrictions comparable in practice to those maintained by the Coordinating Committee, the Secretary shall treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports to members of the Coordinating Committee are treated, including the same manner as exports are treated under subsection (b)(2) of this section and section 10(o) of this Act.

(l) DIVERSION OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence, as determined by the Secretary, that goods or technology which were exported subject to national security controls under this section to a controlled country have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Secretary for as long as that diversion continues—

(A) shall deny all further exports, to or by the party or parties responsible for that diversion or who conspired in that diversion, of any goods or technology subject to national security controls under this section, regardless of whether such goods or technology are available from sources outside the United States; and

(B) may take such additional actions under this Act with respect to the party or parties referred to in subparagraph (A) as the Secretary determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term "unauthorized use" means the use of United States goods or technology in the design, production, or maintenance of any item on the United States Munitions List, or the military use of any item on the International Control List of the Coordinating Committee.

(m) GOODS CONTAINING CONTROLLED PARTS AND COMPONENTS.—Export controls may not be imposed under this section, or under any other provision of law, on a good solely on the basis that the good contains parts or components subject to export controls under this section if such parts or components—

(1) are essential to the functioning of the good,

(2) are customarily included in sales of the good in countries other than controlled countries, and

(3) comprise 25 percent or less of the total value of the good,

unless the good itself, if exported, would by virtue of the functional characteristics of the good as a whole make a significant contribution to the military potential of a controlled country which would prove detrimental to the national security of the United States.

(n) SECURITY MEASURES.—The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and in consultation with the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to export controls under this section to develop security systems to prevent violations or evasions of those export controls.

(o) RECORDKEEPING.—The Secretary, the Secretary of Defense, and any other department or agency consulted in connection with a license application under this Act or a revision of a list of goods or technology subject to export controls under this Act, shall make and keep records of their respective advice, recommendations, or decisions in connection with any such license application or revision, including the factual and analytical basis of the advice, recommendations, or decisions.

(p) NATIONAL SECURITY CONTROL OFFICE.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there is established in the Department of Defense a National Security Control Office under the direction of the Under Secretary of Defense Policy. The Secretary of Defense may delegate to that office such of those authorities and responsibilities, together with such ancillary functions, as the Secretary of Defense considers appropriate.

(q) EXCLUSION FOR AGRICULTURAL COMMODITIES.—This section does not authorize export controls on agricultural commodities, including fats, oils, and animal hides and skins.

FOREIGN POLICY CONTROLS

SEC. 6. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than a year.

(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(5) In accordance with the provisions of section 10 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

(b) CRITERIA.—(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United

States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985, the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

(c) CONSULTATION WITH INDUSTRY.—The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 before imposing any export control under this section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

(d) CONSULTATION WITH OTHER COUNTRIES.—When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

(e) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(f) CONSULTATION WITH THE CONGRESS.—(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report—

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases of such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act. Each such report shall, at the same time it is submitted to the Congress, also be submitted to the General Accounting Office for the purpose of assessing the report's full compliance with the intent of this subsection.

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act.

(5) In addition to any written report required, under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

(g) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director with respect to developing countries, shall determine whether the proposed export control on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interest of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. The subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act.

(h) Foreign Availability.—(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States

to countries subject to the export controls so that denial of an export license would be ineffective in achieving purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (1) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this act.

(i) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before any license is approved for the export of goods or technology valued at more than $1,000,000 to any country concerning which the Secretary of State has made the following determinations:

(A) Such country has repeatedly provided support for acts of international terrorism.

(B) Such exports would make a significant contribution to the military potential of such country, including its military logistic capability, or would enhance the ability of such country to support acts of interntional terrorism.

(2) Any determination which has been made with respect to a country under paragraph (1) of this subsection may not be rescinded unless the President, at least 30 days before the proposed rescission would take effect, submits to the Congress a report justifying the rescission and certifying that—

(A) the country concerned has not provided support for international terrorism, including support or sanctuary for any major terrorist or terrorist group in its territory, during the preceding 6-month period; and

(B) the country concerned has provided assurances that it will not support acts of international terrorism in the future.

(k) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendtions of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(l) CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(m) EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the exports or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements licenses or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(n) **Extension of Certain Controls.**—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(o) **Expanded Authority to Impose Controls.**—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days afte the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on   a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(p) **Spare Parts.**—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

SHORT SUPPLY CONTROLS

SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural

gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for Monitoring or Controls.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, that is representative of an industry or a substantial segment of an industry that processes metallic materials capable of being recycled may transmit a written petition to the Secretary requesting the monitoring of exports or the imposition of export controls, or both, with respect to any such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating that each of the criteria set forth in paragraph (3)(A) of this subsection is satisfied.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall—

(A) include the name of the material that is the subject of the petition,

(B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States,

(C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and

(D) provide that interested persons shall have a period of 30 days beginning on the date of publication of such notice to submit to the Secretary written data, views or arguments, with or without opportunity for oral presentation, with respect to the matter involved.

At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material that is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3)(A) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall determine whether to impose monitoring or controls, or both, on the export of the material that is the subject of the petition, in order to carry out the policy set forth in section 3(2)(C) of this Act. In making such determination, the Secretary shall determine whether—

(i) there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply and demand;

(ii) there has been a significant increase in the domestic price of such material or a domestic shortage of such material relative to demand;

(iii) exports of such material are as important as any other cause of a domestic price increase or shortage relative to demand found under clause (ii);

(iv) a domestic price increase or shortage relative to demand found under clause (ii) has significantly adversely affected or may significantly adversely affect the national economy or any sector thereof, including a domestic industry; and

(v) monitoring or controls, or both, are necessary in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) The Secretary shall publish in the Federal Register a detailed statement of the reasons for the Secretary's determination pursuant to subparagraph (A) of whether to impose monitoring or controls, or both, including the findings of fact in support of that determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days after the publication of such proposed regulations, and after considering any public comments on the proposed regulations, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses to such petitions which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after the consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls, on a temporary basis, on the export of a metallic material after a petition is filed under paragraph (1)(A) with respect to that material but before the Secretary makes a determination under paragraph (3) with respect to that material only if—

(A) the failure to take such temporary action would result in irreparable harm to the entity filing the petition, or to the national economy or segment thereof, including a domestic industry, and

(B) the Secretary considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act, except that if the Secretary determines, on the Secretary's own initiative, to impose monitoring or controls, or both, on the export of metallic materials capable of being recycled, under the

authority of this section, the Secretary shall publish the reasons for such action in accordance with paragraphs (3) (A) and (B) of this subsection.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) **Domestically Produced Crude Oil.**—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from the country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (C) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under subparagraphs (A) and (B), except that any ocean transportation of such oil shall be by vessels documented under section 12106 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to paragraph (2) of this subsection.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity and quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil suppliers of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) In any case in which the President determines that it is necessary to impose export controls on refined petroleum products in order to carry out the policy set forth in section 3(2)(C) of this Act, the President shall notify the Congress of that determination. The President shall also notify the Congress if and when he determines that such export controls are no longer necessary. During any period in which a determination that such export controls are necessary is in effect, no refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act to the extent necessary to take into account

delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The Authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) or paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3)(A) If the President imposes export controls on any agricultural commodity in order to carry out the policy set forth in paragraph (2)(B), (2)(C), (7), or (8) of section 3 of this Act, the President shall immediately transmit a report on such action to the Congress, setting forth the reasons for the controls in detail and specifying the period of time, which may not exceed 1 year, that the controls are proposed to be in effect. If the Congress, within 60 days after the date of its receipt of the report, adopts a joint resolution pursuant to paragraph (4) approving the imposition of the export controls, then such controls shall remain in effect for the period specified in the report, or until terminated by the President, whichever occurs first. If the Congress, within 60 days after the date of its receipt of such report fails to adopt a joint resolution approving such controls, then such controls shall cease to be effective upon the expiration of the 60-day period.

(B) The provisions of subparagraph (A) and paragraph (4) shall not apply to export controls—

(i) which are extended under this Act if the controls, when imposed, were approved by the Congress under subparagraph (A) and paragraph (4); or

(ii) which are imposed with respect to a country as part of the prohibition or curtailment of all exports to that country.

(4)(A) For purposes of this paragraph, the term joint resolution means only a joint resolution the matter after the resolving clause of which is as follows: "That, pursuant to section 7(g)(3) of the Export Administration Act of 1979, the President may impose export controls as specified in the report submitted to the Congress on .", with the blank space being filled with the appropriate date.

(B) On the day on which a report is submitted to the House of Representatives and the Senate under paragraph (3), a joint resolution with respect to the export controls specified in such report shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which the House is in session.

(C) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

(D) If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(E) A joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this paragraph, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this paragraph which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(F) In the case of a joint resolution described in subparagraph (A), if, before the passage by one House of a joint resolution of that

House, that House receives a resolution with respect to the same matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) In the computation of the period of 60 days referred to in paragraph (3) and the period of 30 days referred to in subparagraph (D) of paragraph (4), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act.

(i) UNPROCESSED RED CEDAR.—(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs harested from State or Federal lands may be exported from the United States.

(2) To the maximum extent practicable, the Secretary shall utilize the multiple validated export licenses described in section 4(a)(2) of this Act in lieu of validated licenses for exports under this subsection.

(3) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(4) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(5) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) Effect of Controls on Existing Contracts.—The export restrictions contained in subsection (i) of this section and any export controls imposed under this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export. Any export controls imposed under this section on any agricultural commodity (including fats, oils, and animal hides and skins) or on any forest product or fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this subsection, the term "contract to export" includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of goods or technology.

(k) Oil Exports for Use by United States Military Facilities.—For purposes of subsection (d) of this section, and for purposes of any export controls imposed under this Act, shipments of crude oil, refined petroleum products, or partially refined petroleum products from the United States for use by the Department of Defense or United States-supported installations or facilities shall not be considered to be exports.

FOREIGN BOYCOTTS

SEC. 8. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requesting any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contribution to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust, or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses otherwise prohibited, which are not within the intent of such exceptions.

(b) FOREIGN POLICY CONTROLS.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 9. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE SECRETARY.—Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into acccount—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS; OTHER INQUIRIES

SEC. 10. (a) PRIMARY RESPONSIBILITY OF THE SECRETARY.—(1) All export license applications required under this Act shall be submitted by the applicant to the Secretary. All determinations with respect to any such applicant shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to this applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department, or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a part and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—Except as provided in subsection (o), in each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 60 days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—Except in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 20 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations to the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such

application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

Notwithstanding the 10-day period set forth in subsection (b), in the case of exports described in subsection (o), in each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, immediately upon receipt of the properly completed application, refer the application to such department or agency for its review. Such review shall be concurrent with that of the Department of Commerce.

(e) Action by Other Departments and Agencies.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary the information or recommendations requested with respect to the application. The information or recommendations shall be submitted within 20 days after the department or agency receives the application or, in the case of exports described in subsection (o), before the expiration of the time periods permitted by that subsection. Except as provided in parapraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2)(A) Except in the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 20-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(B) In the case of exports described in subsection (o), if the head of any such department or agency notifies the Secretary, before the expiration of the 15-day period provided in subsection (o)(1), that more time is required for review by such department or agency, the Secretary shall notify the applicant, pursuant to subsection (o)(1)(C), that additional time is required to consider the application, and such department or agency shall have additional time to consider the application within the limits permitted by subsection (o)(2). If such department or agency does not submit its recommendations within the time periods permitted under subsection (o), it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by the Secretary.—(1) Within 60 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 60-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations. The provision of this paragraph shall not apply in the case of exports described in subsection (o).

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant in writing of the specific questions raised and any such negative considerations or recommendations. Before a final determination with respect to the application is made, the applicant shall be entitled—

(A) to respond in writing to such questions, considerations, or recommendations within 30 days after receipt of such information from the Secretary; and

(B) upon the filing of a written request with the Secretary within 15 days after the receipt of such information, to respond in person to the department or agency raising such questions, considerations, or recommendations.

The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of—

(A) the determination,

(B) the statutory basis for the proposed denial,

(C) the policies set forth in section 3 of this Act which would be furthered by the proposed denial,

(D) what if any modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with export controls imposed under this Act,

(E) which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for considerations with regard to such modifications or restrictions, if appropriate,

(F) to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the determination to deny the application, and

(G) the availablity of appeal procedures.

The Secretary shall allow the applicant at least 30 days to respond to the Secretary's determination before the license application is denied. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after the deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor. The provisions of this paragraph shall not apply in the case of exports described in subsection (o).

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of

Defense is authorized to review any proposed export of any goods or technology to any country, to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 20 days after notification of the request, shall—

(A) recommend to the President and the Secretary that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

Whenever the Secretary of Defense makes a recommendation to the President pursuant to paragraph (2)(A), the Secretary shall also submit his recommendation to the President on the request to export if the Secretary differs with the Secretary of Defense. If the President notifies the Secretary, within 20 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country. If the Secretary of Defense fails to make a recommendation or notification under this paragraph within the 20-day period specified in the third sentence, or if the President, within 20 days after receiving a recommendation from the Secretary of Defense with respect to an export, fails to notify the Secretary that he approves or disapproves the export, the Secretary shall approve or deny the request for a license or other authority to export without such recommendation or notification.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 40 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 40-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 40-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORDS.—The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 20 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a

restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(k) CHANGES IN REQUIREMENTS FOR APPLICATIONS.—Except as provided in subsection (b)(3) of this section, in any case in which, after a license application is submitted, the Secretary changes the requirements for such a license application, the Secretary may request appropriate additional information of the applicant, but the Secretary may not return the application to the applicant without action because it fails to meet the changed requirements.

(l) OTHER INQUIRIES.—(1) In any case in which the Secretary receives a written request asking for the proper classification of a good or technology on the control list, the Secretary shall, within 10 working days after receipt of the request, inform the person making the request of the proper classification.

(2) In any case in which the Secretary receives a written request for information about the applicability of export license requirements under this Act to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receipt of the request, reply with that information to the person making the request.

(m) SMALL BUSINESS ASSISTANCE.—Not later than 120 days after the date of the enactment of this subsection, the Secretary shall develop and transmit to the Congress a plan to assist small businesses in the export licensing application process under this Act. The plan shall include, among other things, arrangements for counseling small businesses on filing applications and identifying goods or technology on the control list, proposals for seminars and conferences to educate small businesses on export controls and licensing procedures, and the preparation of informational brochures. The Secretary shall, not later than 120 days after the date of the enactment of the Export Enhancement Act of 1988, report to the Congress on steps taken to implement the plan developed under this subsection to assist small businesses in the export licensing application process.

(n) REPORTS ON LICENSE APPLICATIONS.—(1) Not later than 180 days after the date of the enactment of this subsection, and not later than the end of each 3-month period thereafter, the Secretary shall submit to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate a report listing—

(A) all applications on which action was completed during the preceding 3-month period and which required a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, before notification of a decision to approve or deny the application was sent to the applicant; and

(B) in a separate section, all applications which have been in process for a period longer than the period permitted under subsection (c), (f)(1), or (h) of this section, as the case may be, and upon which final action has not been taken.

(2) With regard to each application, each listing shall identify—

(A) the application case number;

(B) the value of the goods or technology to which the application relates;

(C) the country of destination of the goods or technology;

(D) the date on which the application was received by the Secretary;

(E) the date on which the Secretary approved or denied the application;

(F) the date on which the notification of approval or denial of the application was sent to the applicant; and

(G) the total number of days which elapsed between receipt of the application, in its properly completed form, and the earlier of the last day of the 3-month period to which the report relates, or the date on which notification of approval or denial of the application was sent to the applicant.

(3) With respect to an application which was referred to other departments or agencies, the listing shall also include—

(A) the departments or agencies to which the application was referred:

(B) the date or dates of such referral; and

(C) the date or dates on which recommendations were received from those departments or agencies.

(4) With respect to an application referred to any other department or agency which did not submit or has not submitted its recommendations on the application within the period permitted under subsection (e) of this section to submit such recommendations, the listing shall also include—

(A) the office responsible for processing the application and the position of the officer responsible for the office; and

(B) the period of time that elapsed before the recommendations were submitted or that has elapsed since referral of the application, as the case may be.

(5) Each report shall also provide an introduction which contains—

(A) summary of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in the applications, grouped according to—

(i) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, as follows: 61 to 75 days, 76 to 90 days, 91 to 105 days, 106 to 120 days, and more than 120 days; and

(ii) the number of days which elapsed before action on the applications was completed, or which has elapsed without action on the applications being completed, beyond the period permitted under subsection (c), (f)(1), or (h) of this section for the processing of applications, as follows: not more than 15 days, 16 to 30 days, 31 to 45 days, 46 to 60 days, and more than 60 days; and

(B) a summary by country of destination of the number of applications described in paragraph (1)(A) and (B) of this subsection, and the value of the goods or technology involved in applications, on which action was not completed within 60 days.

(o) **Exports to Members of Coordinating Committee.**—(1) Fifteen working days after the date of formal filing with the Secretary of an individual validated license application for the export of goods or technology to a country that maintains export controls on such goods or technology pursuant to the agreement of the governments participating in the group known as the Coordinating Committee, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval;

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied; or

(C) the Secretary requires additional time to consider the application and the applicant has been so informed.

(2) In the event that the Secretary notifies an applicant pursuant to paragraph (1)(C) that more time is required to consider an individual validated license application, a license for the transaction specified in the application shall become valid and effective and the goods or technology are authorized for export pursuant to such license 30 working days after the date that such license application was formally filed with the Secretary unless—

(A) the application has been otherwise approved by the Secretary, in which case it shall be valid and effective according to the terms of the approval; or

(B) the application has been denied by the Secretary pursuant to this section and the applicant has been so informed, or the applicant has been informed, pursuant to subsection (f)(3) of this section, that the application should be denied.

(3) In reviewing an individual license application subject to this subsection, the Secretary shall evaluate the information set forth in the application and the reliability of the end-user.

(4) Nothing in this subsection shall affect the scope or availability of licenses authorizing multiple exports set forth in section 4(a)(2) of this Act.

(5) The provisions of this subsection shall take effect 4 months after the date of the enactment of the Export Administration Amendments Act of 1985.

VIOLATIONS

Sec. 11. (a) **In General.**—Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) **Willful Violations.**—Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000 whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act, or any regulation, order or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported,

shall, in the case of a violation of an export control imposed under section 5 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 8(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 544 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellanous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c) a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Forfeiture of Property Interest and Proceeds.—(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 5 of this Act (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18, United States Code.

(h) Prior Convictions.—(1) No person convicted of a violation of this Act (or any regulation, license, or order issued under this Act), any regulation, license, or order issued under the International Emergency Economic Powers Act, section 793, 794, or 798 of title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778) shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this Act for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this Act in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 13(c) of this Act.

(i) Other Authorities.—Nothing in subsection (c), (d), (f), (g), or (h) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle, administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

MULTILATERAL EXPORT CONTROL VIOLATIONS

SEC. 11A. (a) DETERMINATION BY THE PRESIDENT.—The President, subject to subsection (c), shall apply sanctions under subsection (b) for a period of not less than 2 years and not more than 5 years, if the President determines that—

(1) a foreign person has violated any regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, and

(2) such violation has resulted in substantial enhancement of Soviet and East bloc capabilities in submarine or antisubmarine warfare, ballistic or antiballistic missile technology, strategic aircraft, command, control, communications and intelligence, or other critical technologies as determined by the President, on the advice of the National Security Council, to represent a serious adverse impact on the strategic balance of forces.

The President shall notify the Congress of each action taken under this section. This section, except subsections (h) and (j), applies only to violations that occur after the date of the enactment of the Export Enhancement Act of 1988.

(b) SANCTIONS.—The sanctions referred to in subsection (a) shall apply to the foreign person committing the violation, as well as to any parent, affiliate, subsidiary, and successor entity of the foreign person, and except as provided in subsection (c), are as follows:

(1) a prohibition on contracting with, and procurement of products and services from, a sanctioned person, by any department, agency, or instrumentality of the United States Government, and

(2) a prohibition on importation into the United States of all products produced by a sanctioned person.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the foreign person or other entity to which the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before the date on which the President notifies the Congress of the intention to impose the sanctions;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) Exclusion.—The President shall not apply sanctions under this section to a parent, affiliate, subsidiary, and successor entity of a foreign person if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not knowingly violated the export control regulation violated by the foreign person, and

(2) the government of the country with jurisdiction over the parent, affiliate, subsidiary, or successor entity had in effect, at the time of the violation by the foreign person, an effective export control system consistent with principles agreed to in the Coordinating Committee, including the following:

(A) national laws providing appropriate civil and criminal penalties and statutes of limitations sufficient to deter potential violations;

(B) a program to evaluate export license applications that includes sufficient technical expertise to assess the licensing status of exports and ensure the reliability of end-users;

(C) an enforcement mechanism that provides authority for trained enforcement officers to investigate and prevent illegal exports;

(D) a system of export control documentation to verify the movement of goods and technology; and

(E) procedures for the coordination and exchange of information concerning violations of the agreement of the Coordinating Committee.

(e) Definitions.—For purposes of this section—

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term "sanctioned person" means a foreign person, and any parent, affiliate, subsidiary, or successor entity of the foreign person, upon whom sanctions have been imposed under this section.

(f) Subsequent Modifications of Sanctions.—The President may, after consultation with the Congress, limit the scope of sanctions applied to a parent, affiliate, subsidiary, or successor entity of the foreign person determined to have committed the violation on account of which the sanctions were imposed if the President determines that—

(1) the parent, affiliate, subsidiary, or successor entity (as the case may be) has not, on the basis of available evidence, itself violated the export control regulation involved, either directly or through a course of conduct;

(2) the government with jurisdiction over the parent, affiliate, subsidiary, or successor entity has improved its export control system as measured by the criteria set forth in subsection (d)(2);

(3) the parent, affiliate, subsidiary, or successor entity, has instituted improvements in internal controls sufficient to detect and prevent violations of the export control regime implemented under paragraph (2); and

(4) the impact of the sanctions imposed on the parent, affiliate, subsidiary, or successor entity is proportionate to the increased defense expenditures imposed on the United States.

Notwithstanding the preceding sentence, the President may not limit the scope of the sanction referred to in subsection (b)(1) with respect to the parent of the foreign person determined to have committed the violation, until that sanction has been in effect for at least 2 years.

(g) REPORTS TO CONGRESS.—The President shall include in the annual report submitted under section 14, a report on the status of any sanctions imposed under this section, including any exceptions, exclusions, or modifications of sanctions that have been applied under subsection (c), (d), or (f).

(h) DISCRETIONARY IMPOSITION OF SANCTIONS.—If the President determines that a foreign person has violated a regulation issued by a country to control exports for national security purposes pursuant to the agreement of the group known as the Coordinating Committee, but in a case in which subsection (a)(2) may not apply, the President may apply the sanctions referred to in subsection (b) against that foreign person for a period of not more than 5 years.

(i) COMPENSATION FOR DIVERSION OF MILITARILY CRITICAL TECHNOLOGIES TO CONTROLLED COUNTRIES.—(1) In cases in which sanctions have been applied against a foreign person under subsection (a), the President shall initiate discussions with the foreign person and the government with jurisdiction over that foreign person regarding compensation on the part of the foreign person in an amount proportionate to the costs of research and development and procurement of new defensive systems by the United States and the allies of the United States to counteract the effort of the technological advance achieved by the Soviet Union as a result of the violation by that foreign person.

(2) The President shall, at the time that discussions are initiated under paragraph (1), report to the Congress that such discussions are being undertaken, and shall report to the Congress the outcome of those discussions.

(j) OTHER ACTIONS BY THE PRESIDENT.—Upon making a determination under subsection (a) and (h), the President shall—

(1) initiate consultations with the foreign government with jurisdiction over the foreign person who committed the violation involved, in order to seek prompt remedial action by that government;

(2) initiate discussions with the government participating in the Coordinating Committee regarding the violation and means to ensure that similar violations do not occur; and

(3) consult with and report to the Congress on the nature of the violation and the actions the President proposes to take, or has taken, to rectify the situation.

(k) DAMAGES FOR CERTAIN VIOLATIONS.—(1) In any case in which the President makes a determination under subsection (a), the Secretary of Defense shall determine the costs of restoring the military preparedness of the United States on account of the violation involved. The Secretary of Defense shall notify the Attorney General of his determination, and the Attorney General may bring an action for damages, in any appropriate district court of the United States, to recover such costs against the person who committed the violation, any person that is owned or controlled by the person who committed the violation, and any person who owns and controls the person who committed the violation.

(3) The total amount awarded in any case brought under paragraph (2) shall be determined by the court in light of the facts and circumstances, but shall not exceed the amount of the net loss to the national security of the United States. An action under this subsection shall be commenced not later than 3 years after the violation occurs, or one year after violation is discovered, whichever is later.

(l) DEFINITION.—For purposes of this section, the term "foreign person" means any person other than a United States person.

ENFORCEMENT

SEC. 12. (a) GENERAL AUTHORITY.—(1) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 or the Export Administration Act of 1969, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigation within the United States, and the Commissioner of Customs (and officers or employees of the United States Customs Service specifically designated by the Commissioner) may make such investigations outside of the United States, and the head of such department or agency (and such officers or employees) may obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. In addition to the authority conferred by this paragraph, the Secretary (and officers or employees of the Department of Commerce designated by the Secretary) may conduct, outside the United States, pre-license investigations and post-shipment verifications of items licensed for export, and investigations in the enforcement of section 8 of this Act.

(2)(A) Subject to subparagraph (B) of this paragraph, the United States Customs Service is authorized, in the enforcement of this Act, to search, detain (after search), and seize goods or technology at those ports of entry or exit from the United States where officers of the Customs Service are authorized by law to conduct such searches, detentions, and seizures, and at those places outside the United States where the Customs Service, pursuant to agreements or other arrangements with other countries, is authorized to perform enforcement activities.

(B) An officer of the United States Customs Service may do the following in carrying out enforcement authority under this Act:

(i) Stop, search, and examine a vehicle, vessel, aircraft or person on which or whom such officer has reasonable cause to suspect there are any good or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(ii) Search any package or container in which such officer has reasonable cause to suspect there are any goods or technology that has been, is being, or is about to be exported from the United States in violation of this Act.

(iii) Detain (after search) or seize and secure for trial any goods or technology on or about such vehicle, vessel, aircraft or person, or in such package or container, if such officer has probable cause to believe the goods or technology has been, is being, or is about to be exported from the United States in violation of this Act.

(iv) Make arrests, without warrant for any violations of this Act committed in his or her presence or view or if the officer has probable cause to believe that the person to be arrested has committed or is committing such a violation.

The arrest authority conferred by clause (iv) of this subparagraph is in addition to any arrest authority under other laws. The Customs Service may not detain for more than 20 days any shipment of goods or technology eligible for export under a general license under section 4(a)(3). In a case in which such detention is on account of a disagreement between the Secretary and the head of any other department or agency with export authority under other provisions of law concerning the export license requirements for such goods or technology, such disagreement shall be resolved within that 20-day period. At the end of that 20-day period, the Customs Service shall either release the goods or technology, or seize the goods or technology as authorized by other provisions of law.

(3)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall have the responsibility for the enforcement of section 8 of this Act and, in the enforcement or the other provisions of this Act, the Secretary is authorized to search, detain (after search), and seize goods or technology at those places within the United States other than those ports specified in paragraph (2)(A) of this subsection. The search, detention (after search), or seizure of goods or technology at those ports and places specified in paragraph (2)(A) may be conducted by officers or employees of the Department of Commerce designated by the Secretary with the concurrence of the Commissioner of Customs or a person designated by the Commissioner.

(B) The Secretary may designate any employee of the Office of Export Enforcement of the Department of Commerce to do the following in carrying out enforcement authority under this Act:

(i) Execute any warrant or other process issued by a court or officer of competent jurisdiction with respect to the enforcement of the provisions of this Act.

(ii) Make arrests without warrant for any violation of this Act committed in his or her presence or view, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing such a violation.

(iii) Carry firearms in carrying out any activity described in clause (i) or (ii).

(4) The authorities first conferred by the Export Administration Amendments Act of 1985 under paragraph (3) shall be exercised pursuant to guidelines approved by the Attorney General. Such guidelines shall be issued not later than 120 days after the date of the enactment of the Export Administration Amendments Act of 1985.

(5) All cases involving violations of this Act shall be referred to the Secretary for purposes of determining civil penalties and administrative sanctions under section 11(c) of this Act, or to the Attorney General for criminal action in accordance with this Act.

(6) Notwithstanding any other provision of law, the United States Customs Service may expend in the enforcement of export controls under this Act, not more than $12,000,000 in the fiscal year 1985 and not more than $14,000,000 in the fiscal year 1986.

(7) Not later than 90 days after the date of the enactment of the Export Administration Amendments Act of 1985, the Secretary, with the concurrence of the Secretary of the Treasury, shall publish in the Federal Register procedures setting forth, in accordance with this subsection, the responsibilities of the Department of Commerce and the United States Customs Service in the enforcement of this Act. In addition, the Secretary, with the concurrence of the Secretary of the Treasury, may publish procedures for the sharing of information in accordance with subsection (c)(3) of this section, and procedures for the submission to the appropriate departments and agencies by private persons of information relating to the enforcement of this Act.

(8) For purposes of this section, a reference to the enforcement of this Act or to a violation of this Act includes a reference to the enforcement or a violation of any regulation, order, or license issued under this Act.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18 United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 8(b)(2) and by section 11(c)(2)(C) of this Act, information obtained under this Act on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information at any time under this Act or previous Act regarding the control of exports, including any report of license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be made available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Any department or agency which obtains information which is relevant to the enforcement of this Act, including information pertaining to any investigation, shall furnish such information to each department or agency with enforcement responsibilities under

this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities. The provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section. The Secretary and the Commissioner of Customs, upon request, shall exchange any licensing and enforcement information with each other which is necessary to facilitate enforcement efforts and effective license decisions. The Secretary, the Attorney General, and the Commissioner of Customs shall consult on a continuing basis with one another and with the heads of other departments and agencies which obtain information subject to this paragraph, in order to facilitate the exchange of such information.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 13. (a) EXEMPTION.—Except as provided in section 11(c)(2) and subsection (c) of this section, the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(c) PROCEDURES RELATING TO CIVIL PENALTIES AND SANCTIONS.—(1) In any case in which a civil penalty or other civil sanction (other than a temporary denial order or a penalty or sanction for a violation of section 8) is sought under section 11 of this Act, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Subject to the provisions of this subsection, any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United Sates Code. With the approval of the administrative law judge, the Government may present evidence in camera in the presence of the charged party or his or her representative. After the hearing, the administrative law judge shall make findings of fact and conclusions of law in a written decision, which shall be referred to the Secretary. The Secretary shall, in a written order, affirm, modify, or vacate the decision of the administrative law judge within 30 days after receiving the decision. The order of the Secretary shall be final and is not subject to judicial review, except as provided in paragraph (3).

(2) The proceedings described in paragraph (1) shall be concluded within a period of 1 year after the complaint is submitted, unless the administrative law judge extends such period for good cause shown.

(3) The order of the Secretary under paragraph (1) shall be final except that the charged party may, within 15 days after the order is issued, appeal the order in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may, while the appeal is pending, stay the order of the Secretary. The court may review only those issues necessary to determine liability for the civil penalty or other sanction involved. In an appeal filed under this paragraph, the court shall set aside any finding of fact for which the court finds there is not substantial evidence on the record and any conclusion of law which the court finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(4) An administrative law judge referred to in this subsection shall be appointed by the Secretary from among those considered qualified for selection and appointment under section 3105 of title 5, United States Code. Any person who, for at least 2 of the 10 years immediately preceding the date of the enactment of the Export Administration Amendments Act of 1985, has served as a hearing commissioner of the Department of Commerce shall be included among these considered as qualified for selection and appointment to such position.

(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—(1) In any case in which it is necessary, in the public interest, to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act, the Secretary may, without a hearing, issue an order temporarily denying United States export privileges (hereinafter in this subsection referred to as a "temporary denial order") to a person. A temporary denial order may be effective no longer than 180 days unless renewed in writing by the Secretary for additional 180 day periods in order to prevent such an imminent violation, except that a temporary denial order may be renewed only after notice and an opportunity for a hearing is provided.

(2) A temporary denial order shall define the imminent violation and state why the temporary denial order was granted without a hearing. The person or persons subject to the issuance or renewal of a temporary denial order may file an appeal of the issuance or renewal of the temporary denial order with an administrative law judge who shall, within 10 working days after the appeal is filed,

recommend that the temporary denial order be affirmed, modified, or vacated. Parties may submit briefs and other material to the judge. The recommendation of the administrative law judge shall be submitted to the Secretary who shall either accept, reject, or modify the recommendation by written order within 5 working days after receiving the recommendation. The written order of the Secretary under the preceding sentence shall be final and is not subject to judicial review, except as provided in paragraph (3). The temporary denial order shall be affirmed only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this Act or any regulation, order, or license issued under this Act. All materials submitted to the administrative law judge and the Secretary shall constitute the administrative record for purposes of review by the courts.

(3) An order of the Secretary affirming, in whole or in part, the issuance of a temporary denial order may, within 15 days after the order is issued, be appealed by a person subject to the order to the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of the appeal. The court may review only those issues necessary to determine whether the standard for issuing the temporary denial order has been met. The court shall vacate the Secretary's order if the court finds that the Secretary's order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(e) Appeals From License Denials.—A determination of the Secretary, under section 10(f) of this Act, to deny a license may be appealed by the applicant to an administrative law judge who shall have the authority to conduct proceedings to determine only whether the item sought to be exported is in fact on the control list. Such proceedings shall be conducted within 90 days after the appeal is filed. Any determination by an administrative law judge in the proceedings shall be reviewed by the Secretary, who shall either affirm or vacate the determination in a written decision within 30 days after receiving the determination. The Secretary's written decision shall be final and is not subject to judicial review. Subject to the limitations provided in section 12(c) of this Act, the Secretary's decision shall be published in the Federal Register.

ANNUAL REPORT

Sec. 14. (a) Contents.—Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 5, 6, and 7, and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the

confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3);

(5) actions taken to carry out section 5(d);

(6) changes in categories of items under export control referred to in section 5(e);

(7) determinations of foreign availability made under section 5(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(6);

(9) the operation of the indexing system under section 5(g);

(10) consultations with the technical advisory committees established pursuant to section 5(h), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(11) the effectiveness of export controls imposed under section 6 in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7;

(13) the information contained in the reports required by section 7(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act;

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10, including an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act;

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d), and any action taken, on the basis of the review required by section 12(e), to simplify regulations issued under this Act;

(19) violations under section 11 and enforcement activities under section 12; and

(20) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b).

(b) Report on Certain Export Controls.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on Negotiations.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i), until such negotiations are concluded.

(d) Report of Exports to Controlled Countries.—The Secretary shall include in each annual report a detailed report which lists every license for exports to controlled countries which was approved under this Act during the preceding fiscal year. Such report shall specify to whom the license was granted, the type of goods or technology exported, and the country receiving the goods or technology. The information required by this subsection shall be subject to the provisions of section 12(c) of this Act.

(e) Report on Domestic Economic Impact of Exports to Controlled Countries.—The Secretary shall include in each annual report a detailed description of the extent of injury to United States industry and the extent of job displacement caused by United States exports of goods and technology to controlled countries. The annual report shall also include a full analysis of the consequences of exports of turnkey plants and manufacturing facilities to controlled countries which are used by such countries to produce goods for export to the United States or to compete with United States products in export markets.

(f) Annual Report of the President.—The President shall submit an annual report to the Congress estimating the additional defense expenditures of the United States arising from illegal technology transfers, focusing on estimated defense costs arising from illegal technology transfers that resulted in a serious adverse impact on the strategic balance of forces. These estimates shall be based on assessment by the intelligence community of any technology transfers that resulted in such serious adverse impact. This report may have a classified annex covering any information of a sensitive nature.

ADMINISTRATIVE AND REGULATORY AUTHORITY

Sec. 15. (a) Under Secretary of Commerce.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this Act and such other statutes that relate to national security which were delegated to the office of the Assistant Secretary of Commerce for Trade Administration before the date of the enactment of the Export Administration Amendments Act of 1985; and such other functions under this Act which were delegated to such office before such date of enactment, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(b) Issuance of Regulations.—The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of sections 5(a), 6(a), 7(a), or (8)(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person. Any such regulations the purpose of which is to carry out the provisions of section 5, or of section (4)(a) for the purpose of administering the provisions of section 5, may be issued only after the regulations are submitted for review to the Secretary of Defense, the Secretary of State, such other departments and agencies as the Secretary considers appropriate, and the appropriate technical advisory committee. The preceding sentence does not require the concurrence or approval of any official, department, or agency to which such regulations are submitted.

(c) Amendments to Regulations.—If the Secretary proposes to amend regulations issued under this Act, the Secretary shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives on the intent and rationale of such amendments. Such report shall evaluate the cost and burden to United States exporters of the proposed amendments in relation to any enhancement of licensing objectives. The Secretary shall consult with the technical advisory committees authorized under section 5(h) of this Act in formulating or amending regulations issued under this Act. The procedures defined by regulations in effect on January 1, 1984, with respect to sections 4 and 5 of this Act, shall remain in effect unless the Secretary determines, on the basis of substantial and reliable evidence, that specific change is necessary to enhance the prevention of diversions of exports which would prove detrimental to the national security of the United States or to reduce the licensing and paperwork burden on exporters and their distributors.

DEFINITIONS

Sec. 16. As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) The term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term "export" means—

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term "controlled country" means a controlled country under section 5(b)(1) of this Act;

(7) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the Outer Continental Shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(8) the term "Secretary" means the Secretary of Commerce.

EFFECT ON OTHER ACTS

SEC. 17. (a) IN GENERAL.—Except as otherwise provided in this Act, nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 5 or 6 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup of Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act shall apply with respect to such license applications only to the extent that they are

consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611-1613d), is superseded.

(f) AGRICULTURAL ACT OF 1970.—Nothing in this Act shall affect the provisions of the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3).

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—(1) Notwithstanding any other provisions of law, money appropriated to the Department of Commerce for expenses to carry out the purposes of this Act may be obligated or expended only if—

(A) the appropriation thereof has been previously authorized by law enacted on or after the date of the enactment of the Export Administration Amendments Act of 1985; or

(B) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(2) To the extent that legislation enacted after the making of an appropriation to carry out the purposes of this Act authorizes the obligation or expenditure thereof, the limitation contained in paragraph (1) shall have no effect.

(3) The provisions of this subsection shall not be superseded except by a provision of law enacted after the date of the enactment of the Export Administration Amendments Act of 1985 which specifically repeals, modifies, or supersedes the provisions of this subsection.

(b) AUTHORIZATION.—There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act—

(1) $35,935,000 for the fiscal year 1988, of which $12,746,000 shall be available only for enforcement, $2,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, and $21,189,000 shall be available for all other activities under this Act;

(2) $46,913,000 for the fiscal year 1989, of which $15,000,000 shall be available only for enforcement, $5,000,000 shall be available only for foreign availability assessments under subsections (f) and (h)(6) of section 5, $4,000,000 shall be available only for regional export control assistance centers, and $22,913,000 shall be available for all other activities under this Act; and

(3) such additional amounts for each of the fiscal years 1988 and 1989 as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 19. This Act shall take effect upon the expiration of the Export Administration Act of 1969.

TERMINATION DATE

SEC. 20. The authority granted by this Act terminates on September 30, 1990.

SAVINGS PROVISIONS

SEC. 21. (a) IN GENERAL.—All, delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 or the Export Administration Act of 1969 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

[SEC. 22. Technical amendments to the Arms Export Control Act, the Energy Policy and Conservation Act, and the Internal Revenue Code of 1954.]

INTERNATIONAL INVESTMENT SURVEY ACT AUTHORIZATIONS

[SEC. 23. Provides authorization of funds for fiscal years 1980 and 1981 for the International Investment and Trade in Services Survey Act.]

MISCELLANEOUS

[SEC. 24. Amends Public Law 480.]

B. FOREIGN CORRUPT PRACTICES PROVISIONS

Title I of Securities Exchange Act of 1934, as amended [excerpts]

[15 U.S.C. 78dd-1, dd-2, 9, as amended by P.L. 95-213 and P.L. 100-418.]

ACCOUNTING STANDARDS

SEC. 78q. ACCOUNTS AND RECORDS, REPORTS, EXAMINATIONS OF EXCHANGES, MEMBERS AND OTHERS.—(a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association, and every broker or dealer registered pursuant to section 78*o* of this title, shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

(b)(1) Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 12 of this title or an issuer which is required to file reports pursuant to section 15(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

PROHIBITED FOREIGN TRADE PRACTICES

SEC. 78dd-1. PROHIBITED FOREIGN TRADE PRACTICES BY ISSUERS.—(a) PROHIBITION.—It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purpose of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for Routine Governmental Action.—Subsection (a) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative Defenses.—It shall be an affirmative defense to actions under subsection (a) that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by the Attorney General.—Not later than one year after the date of the enactment of the Foreign Corrupt Practices Act Amendments of 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of the Attorney General.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of title 5, United States Code, and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragaph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instru-

mentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

(2)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental actions" does not include any decision by a foregin official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decisionmaking process to encourage a decision to award new business to or continue business with a particular party.

(b) VIOLATIONS.—Section 32(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended to read as follows:

"(c)(1)(A) Any issuer that violates section 30A(a) shall be fined not more than $2,000,000.

"(B) Any issuer that violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(2)(A) Any officer or director of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 30A(a) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(B) Any employee or agent of an issuer who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such issuer), and who willfully violates section 30A(a), shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

"(C) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates section 30A(a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Commission.

"(3) Whenever a fine is imposed under paragaph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.".

SEC. 78dd-2. PROHIBITED FOREIGN TRADE PRACTICES BY DOMESTIC CONCERNS.—(a) PROHIBITION.—It shall be unlawful for any domestic concern, other than an issuer which is subject to section 30A of the Securities Exchange Act of 1934, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) including such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate,

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION.—Subsection (a) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to actions under subsection (a) that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) INJUNCTIVE RELIEF.—(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testi-

mony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) GUIDELINES BY THE ATTORNEY GENERAL.—Not later than 6 months after the date of the enactment of the Foreign Corrupt Practices Act Amendments of 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) OPINIONS OF THE ATTORNEY GENERAL.—(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 52 of title 5, United States Code, and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) PENALTIES.—(1)(A) Any domestic concern that violates subsection (a) shall be fined not more than $2,000,000.

(B) Any domestic concern that violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a), shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) shall be subject to a civil penalty of not more than $10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) DEFINITIONS.—For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(4)(A) For purposes of paragraph (1), the term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing policy protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

(A) a telephone or other interstate means of communication, or

(B) any other interstate instrumentality.

SEC. 78 dd-1 NOTE. INTERNATIONAL AGREEMENT.—(1) NEGOTIATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section. Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act, the President shall submit to the Congress a report on—

(i) the progress of the negotiations referred to in paragraph (1),

(ii) those steps which the executive branch and the Congress should consider taking in the event that these negotiations do not successfully eliminate any competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

(iii) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

(B) The President shall include in the report submitted under subparagraph (A)—

(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (ii) and (iii) of subparagraph (A);

(ii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

(iii) an assessment of the current and future role of private initiatives in curtailing such acts.

C. DOMESTIC INTERNATIONAL SALES CORPORATION [DISC]

[Internal Revenue Code of 1954, 26 U.S.C. 991-997, P.L. 92-178, as amended by P.L. 93-482, P.L. 94-12, P.L. 94-455, P.L. 95-600, P.L. 96-39, P.L. 96-72, P.L. 97-248, P.L. 97-354, and P.L. 98-369]

Part IV—Domestic International Sales Corporations

Subpart A. Treatment of qualifying corporations.
Subpart B. Treatment of distributions to shareholders.

Subpart A—Treatment of Qualifying Corporations

Sec. 991. Taxation of a domestic international sales corporation.
Sec. 992. Requirements of a domestic international sales corporation.
Sec. 993. Definitions and special rules.
Sec. 994. Inter-company pricing rules.

SEC. 991. TAXATION OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

For purposes of the taxes imposed by the subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle except for the tax imposed by chapter 5.

SEC. 992. REQUIREMENTS OF A DOMESTIC INTERNATIONAL SALES CORPORATION.

(a) DEFINITION OF "DISC" AND "FORMER DISC".—

(1) DISC.—For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year.

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year, and

(E) such corporation is not a member of any controlled group of which FSC is a member.

(2) STATUS AS DISC AFTER HAVING FILED A RETURN AS A DISC.—The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a

DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "FORMER DISC".—For purposes of this title, the term "former DISC" means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) ELECTION.—

(1) ELECTION.—

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) EFFECT OF ELECTION.—If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) TERMINATION OF ELECTION.—

(A) REVOCATION.—An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) CONTINUED FAILURE TO BE DISC.—If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) DISTRIBUTIONS TO MEET QUALIFICATION REQUIREMENTS.—

(1) IN GENERAL.—Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satis-

fy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) REASONABLE CAUSE FOR FAILURE.—The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1) (A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30-day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th month after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) CERTAIN DISTRIBUTIONS MADE WITHIN 8½ MONTHS AFTER CLOSE OF TAXABLE YEAR DEEMED FOR REASONABLE CAUSE.—A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) INELIGIBLE CORPORATIONS.—The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 or 593 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a), or

(7) an S corporation.

(e) Coordination With Personal Holding Company Provisions in Case of Certain Produced Film Rents.—If—

(1) a corporation (hereinafter in this subsection referred to as "subsidiary") was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as "parent") throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary, then,

for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

SEC. 993. DEFINITIONS.

(a) Qualified Export Receipts.—

(1) General rule.—For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition or export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts.—The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines

that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term "qualified export receipts" does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) DEFINITION OF CONTROLLED GROUP.—For purposes of this part, the term "controlled group" has the meaning assigned to the term "controlled group of corporations" by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent"each place it appears therein, and section 1563(b) shall not apply.

(b) QUALIFIED EXPORT ASSETS.—For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectual services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraphs (A), (B), (C), (D), (G), or (H) of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period

provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export Property.—

(1) In general.—For purposes of this part, the term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property.—For purposes of this part, the term "export property" does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property, or

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A, or

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy).

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term "processing" does not include extracting or handling, packing packaging, grading, storing, or transporting.

(3) Property in short supply.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the Presi-

dent's determination that the property is no longer in short supply.

(d) Producer's Loans.—

(1) In general.—An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the "borrower"); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation.—An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971.

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirements.—An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower

made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2) (A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) SPECIAL LIMITATION IN THE CASE OF DOMESTIC FILM MAKER.—

(A) IN GENERAL.—In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) DOMESTIC FILM MAKER.—For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are

United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) Special rules for application of subparagraph (B)(v).—For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a nonresident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) Related Foreign Export Corporation.—In determining whether a corporation (hereinafter in this subsection referred to as "the domestic corporation") is a DISC—

(1) Foreign international sales corporation.—A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) Real property holding company.—A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) Associated foreign corporation.—A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563(d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross Receipts.—For purposes of this part, the term "gross receipts" means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States Defined.—For purposes of this part, the terms "United States" includes the Commonwealth of Puerto Rico and the possessions of the United States.

SEC. 994. INTER-COMPANY PRICING RULES.

(a) In General.—In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sale price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) Rules for Commissions, Rentals, and Marginal Costing.—The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) Export Promotion Expenses.—For purposes of this section, the term "export promotion expenses" means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by U.S. persons or ships documented under the laws of the United States in those cases where law or regulations do not require that such property be shipped aboard such airplanes or ships.

Subpart B—Treatment of Distributions to Shareholders

Sec. 995. Taxation of DISC income to shareholders.
Sec. 996. Rules for allocation in the case of distributions and losses.
Sec. 997. Special subchapter C rules.

SEC. 995. TAXATION OF DISC INCOME TO SHAREHOLDERS.

(a) General Rule.—A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) Deemed Distributions.—

(1) Distributions in qualifed years.—A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transition in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized.

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property which in the hands of the DISC is stock in trade or other property described in section 1221(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property had been sold or exchanged rather than transferred to the DISC.

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property.

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000.

(F) the sum of—

(i) one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to the amount determined under clause (i) multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) Distributions upon disqualification.—

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number of immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) Taxable income attributable to military property.—

(A) In general.—For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductibles which are properly apportioned or allocated to such income.

(B) Military property.—For purposes of subparagraph (A), the term "military property" means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to the Military Security Act of 1954 (22 U.S.C. 1934).

(4) Aggregation of qualified export receipts.—

(A) In general.—For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation.—The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) Gain on Disposition of Stock in a DISC.—

(1) In general.—If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2),

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend, or

(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.

(2) Amount included.—The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) Foreign Investment Attributable to DISC Earnings.—For purposes of this part—

(1) In general.—The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) Net increase in foreign assets.—The term "net increase in foreign assets" of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States, over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) ACTUAL FOREIGN INVESTMENT.—The term "actual foreign investment" by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971.

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term "domestic member" means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term "foreign member" means a foreign corporation which is a member of such a controlled group.

(4) UNCOMMITTED TRANSITIONAL FUNDS.—The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term "liquid assets" means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (a) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) SPECIAL RULE.—Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) [Repealed effective for transactions after Dec. 31, 1984, in taxable years ending after such date.] DEFINITIONS AND SPECIAL RULES RELATING TO COMPUTATION OF TAXABLE INCOME ATTRIBUTABLE TO BASE PERIOD EXPORT GROSS RECEIPTS.—

(1) TAXABLE INCOME ATTRIBUTABLE TO BASE PERIOD EXPORT GROSS RECEIPTS.—For purposes of this section, the taxable income attributable to base period export gross receipts shall be an amount equal to that portion of the adjusted taxable income of a DISC which—

(A) the amount of the adjusted base period export gross receipts, bears to

(B) the amount of the export gross receipts of the DISC for the taxable year.

(2) ADJUSTED TAXABLE INCOME.—For purposes of this section, the term "adjusted taxable income" means the income of a DISC for the taxable year, reduced by the amounts described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of subsection (b).

(3) ADJUSTED BASE PERIOD EXPORT GROSS RECEIPTS.—For purposes of this section, the term "adjusted base period export gross receipts" means 67 percent of the average of the export gross receipts of the DISC for taxable years during the base period (as defined in paragraph (5)). For purposes of the preceding sentence, if any property by reason of section 993(c)(2), gross receipts from such property shall be excluded from export gross receipts during the taxable years on the base period.

(4) EXPORT GROSS RECEIPTS.—For purposes of this section, the term "export gross receipts" means—

(A) qualified export receipts described in subparagraphs (A), (B), (C), (G), and (H) of section 993(a)(1), reduced by

(B) 50 percent of such qualified export receipts which are attributable to military property (as defined in subsection (b)(3)(B)).

(5) BASE PERIOD.—For purposes of paragraph (3)—

(A) for any taxable year beginning before 1980, the base period shall be the taxable years beginning in 1972, 1973, 1974, and 1975, and

(B) for any taxable year beginning in any calendar year after 1979, the base period shall be the taxable years beginning in the fourth, fifth, sixth, and seventh calendar years preceding such calendar year.

(6) NO BASE PERIOD YEAR.—If a DISC did not have a taxable year beginning in a calendar year specified in paragraph (5), then, for purposes of computing the adjusted base period export gross receipts such DISC is deemed to have a taxable year and export gross receipts of zero for the year.

(7) SHORT TAXABLE YEAR.—The Secretary shall prescribe such regulations as he deems necessary with respect to a short taxable year for purposes of computing base period export gross receipts of a DISC, or a short taxable year in which deemed distributions (as described in subsection (b)) are made, including the circumstances under which the short taxable year shall be annualized, and the proper method of annualization.

(8) CONTROLLED GROUP.—If more than one member of a controlled group (as defined in section 993(a)(3)) for the taxable year qualifies as a DISC, then subsection (b)(1)(E), this subsection, and subsection (f) shall each be applied in a manner provided by regulations prescribed by the Secretary by aggregating the export gross receipts and taxable income of such DISC's for the taxable year and by aggregating the export gross receipts of such DISCs for each taxable year in the base period.

(9) SPECIAL RULE WERE THE OWNERSHIP OF DISC STOCK AND THE TRADE OR BUSINESS GIVING RISE TO EXPORT GROSS RECEIPTS OF THE DISC ARE SEPARATED.—

(A) IN GENERAL.—If, at any time after the beginning of the base period, there has been a separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC, then the persons who own the trade or business during the taxable year shall be treated as having had additional export gross receipts during the base period attributable to such trade or business.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

(i) where the stock in the DISC and the trade or business are owned throughout the taxable year by members of the same controlled group, and

(ii) to the extent that the taxpayers's ownership of the stock in the DISC for the taxable year is proportionate to his ownership during the taxable year of the trade or business.

(10) DISC BASE PERIOD ATTRIBUTED THROUGH SHAREHOLDERS IN CERTAIN CASES.—

(A) IN GENERAL.—If—

(i) if any person owns 5 percent or more of the stock of a DISC (hereinafter in this paragraph referred to as "first DISC"), and

(ii) such person at any time during the base period of the first DISC owned 5 percent or more of the stock of a second DISC, then, to the extent provided in such regulations as the Secretary may prescribe to prevent circumvention of the application of subsection (b)(1)(E), an amount equal to such shareholder's share of the base period export gross receipts of the second DISC shall be added to the base period export gross receipts of the first DISC.

(B) OWNERSHIP OF STOCK.—For purposes of subparagraph (A), the ownership of stock shall be determined under section 318.

(e) CERTAIN TRANSFERS OF DISC ASSETS.—If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5-year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC.

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) [Repealed effective for transactions after Dec. 31, 1984, in taxable years ending after such date.] SMALL DISC's.—

(1) ADJUSTED TAXABLE INCOME OF $100,000 OR LESS.—If a DISC has adjusted taxable income of $100,000 or less for a taxable year, subsection (b)(1)(E) shall not apply with respect to such year.

(2) SPECIAL RULE.—If a DISC has adjusted taxable income of more than $100,000 for a taxable year, then the amount taken into account under subsection (b)(1)(E) shall be deemed to be an amount equal to the excess (if any) of—

(A) the amount which would (but for this paragraph) be taken into account under subsection (b)(1)(E), over

(B) twice the excess (if any) of $150,000 over the adjusted taxable income.

(f) INTEREST ON DISC-RELATED DEFERRED TAX LIABILITY.—

(1) IN GENERAL.—A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) SHAREHOLDER'S DISC-RELATED DEFERRED TAX LIABILITY.—For purposes of this subsection—

(A) IN GENERAL.—The term "shareholder's DISC-related deferred tax liability" means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) ADJUSTMENTS FOR LOSSES, CREDITS, AND OTHER ITEMS.—The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) TAX LIABILITY.—The term "tax liability" means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) DEFERRED DISC INCOME.—For purposes of this subsection—

(A) IN GENERAL.—The term "deferred DISC income" means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) COMPUTATION YEAR.—For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) DISTRIBUTIONS-IN-EXCESS-OF-INCOME.—For purposes of subparagraph (A), the term "distributions-in-excess-of-income" means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(3) BASE PERIOD T-BILL RATE.—For purposes of this subsection, the term "base period T-bill rate" means the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with

maturities of 52 weeks which were auctioned during the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(4) Short years.—The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(5) Payment and assessment and collection of interest.—The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

SEC. 996. RULES FOR ALLOCATION IN THE CASE IN DISTRIBUTIONS AND LOSSES.

(a) Rules for Actual Distributions and Certain Deemed Distributions.—

(1) In general.—Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) Qualifying distributions.—Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.

(3) Exclusion from gross income.—Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the previously taxed income.

(b) Ordering Rules for Losses.—If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, the previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated FISC income which has been determined is to be deemed distributed to the shareholders (pursuant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) PRIORITY OF DISTRIBUTIONS.—Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) SUBSEQUENT EFFECT OF PREVIOUS DISPOSITION OF DISC STOCK.—

(1) SHAREHOLDER PREVIOUSLY TAXED INCOME ADJUSTMENT.—If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a divided or as ordinary income and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share.

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) CORPORATE ADJUSTMENT UPON REDEMPTION.—If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated an ordinary income, except to the extend distributions with respect to such stock have been treated under paragraph (1).

(e) ADJUSTMENT TO BASIS—

(1) ADDITIONS TO BASIS.—Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) REDUCTIONS OF BASIS.—The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extend that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation this paragraph shall not apply to any distribu-

tion made after the date of the decedents death and before the alternate valuation date provided by section 2032.

(f) Definitions of Divisions of Earnings and Profits.—For purposes of this part.

(1) Disc income.—The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distribution during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) Previously taxed income.—Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) Other earnings and profits.—The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) Effectively Connected Income.—In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

SEC. 997. SPECIAL SUBCHAPTER C RULES.

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

D. FOREIGN SALES CORPORATION [FSC]

Title VIII of Tax Reform Act of 1984, Division A, Deficit Reduction Act of 1984

[Internal Revenue Code of 1954, 26 U.S.C. 921-927, as added by P.L. 98-369]

Subpart C—Taxation of Foreign Sales Corporations

Sec. 921. Exempt foreign trade income excluded from gross income.
Sec. 922. FSC defined.
Sec. 923. Exempt foreign trade income.
Sec. 924. Foreign trading gross receipts.
Sec. 925. Transfer pricing rules.
Sec. 926. Distributions to shareholders.
Sec. 927. Other definitions and special rules.

SEC. 921. EXEMPT FOREIGN TRADE INCOME EXCLUDED FROM GROSS INCOME.

(a) Exclusion.—Exempt foreign trade income of a FSC shall be treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States.

(b) Proportionate Allocation of Deductions to Exempt Foreign Trade Income.—Any deductions of the FSC properly apportioned and allocated to the foreign trade income derived by a FSC from any transation shall be allocated between—

(1) the exempt foreign trade income derived from such transaction, and

(2) the foreign trade income (other than exempt foreign trade income) derived from such transaction on a proportionate basis.

(c) Denial of Credits.—Notwithstanding any other provision of this chapter, no credit (other than a credit allowable under section 27(a), 33, or 34) shall be allowed under this chapter to any FSC.

(d) Foreign Trade Income, Investment Income, and Carrying Charges Treated as Effectively Connected With United States Business.—For purposes of this chapter—

(1) all foreign trade income of a FSC other than—

(A) exempt foreign trade income, and

(B) section 923(a)(2) non-exempt income,

(2) all interest, dividends, royalties, and other investment income received or accrued by a FSC, and

(3) all carrying charges received or accrued by a FSC, shall be treated as income effectively connected with a trade or business conducted through a permanent establishment of such corporation within the United States. Income described in paragraph (1) shall be treated as derived from sources within the United States.

SEC. 922. FSC DEFINED.

(a) FSC Defined.—For purposes of this title, the term "FSC" means any corporation—

(1) which—

(A) was created or organized—

(i) under the laws of any foreign country which meets the requirements of section 927(e)(3), or

(ii) under the laws applicable to any possession of the United States,

(B) has no more than 25 shareholders at any time during the taxable year,

(C) does not have any preferred stock outstanding at any time during the taxable year,

(D) during the taxable year—

(i) maintains an office located outside the United States in a foreign country which meets the requirements of section 927(e)(3) or in any possession of the United States,

(ii) maintains a set of the permanent books of account (including invoices) of such corporation at such office, and

(iii) maintains at a location within the United States the records which such corporation is required to keep under section 6001,

(E) at all times during the taxable year, has a board of directors which includes at least one individual who is not a resident of the United States, and

(F) is not a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member, and

(2) which has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a FSC.

(b) Small FSC Defined.—For purposes of this title, a FSC is a small FSC with respect to any taxable year if—

(1) such corporation has made an election (at the time and in the manner provided in section 927(f)(1) which is in effect for the taxable year to be treated as a small FSC, and

(2) such corporation is not a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such other FSC has also made an election under paragraph (1) which is in effect for such year.

SEC. 923. EXEMPT FOREIGN TRADE INCOME.

(a) Exempt Foreign Trade Income.—For purposes of this subpart—

(1) In general.—The term "exempt foreign trade income" means the aggregate amount of all foreign trade income of a FSC for the taxable year which is described in paragraph (2) or (3).

(2) Income determined without regard to administrative pricing rules.—In the case of any transaction to which paragraph (3) does not apply, 32 percent of the foreign trade income derived from such transaction shall be treated as described in

this paragraph. For purposes of the preceding sentence, foreign trade income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 927(a)(2) (relating to intangibles).

(3) INCOME DETERMINED WITHOUT REGARD TO ADMINISTRATIVE PRICING RULES.—In the case of any transaction with respect to which paragraph (1) or (2) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, $^{16}/_{23}$ of the foreign trade income derived from such transaction shall be treated as described in this paragraph.

(4) SPECIAL RULE FOR FOREIGN TRADE INCOME ALLOCABLE TO A COOPERATIVE.—

(A) IN GENERAL.—In any case in which a qualified cooperative is a shareholder of a FSC, paragraph (3) shall be applied with respect to that portion of the foreign trade income of such FSC for any taxable year which is properly allocable to the marketing of agricultural or horticultural products (or the providing of related services) by such cooperative by substituting "100 percent" for "$^{16}/_{23}$".

(B) PARAGRAPH ONLY TO APPLY TO AMOUNTS FSC DISTRIBUTES.—Subparagraph (A) shall not apply for any taxable year unless the FSC distributes to the qualified cooperative the amount which (but for such subparagraph) would not be treated as exempt foreign trade income. Any distribution under this subparagraph for any taxable year—

(i) shall be made before the due date for filing the return of tax for such taxable year, but

(ii) shall be treated as made on the last day of such taxable year.

(5) SPECIAL RULE FOR MILITARY PROPERTY.—Under regulations prescribed by the Secretary, that portion of the foreign trading gross receipts of the FSC for the taxable year attributable to the disposition of, or services relating to, military property (within the meaning of section 995(b)(3)(B)) which may be treated as exempt foreign trade income shall equal 50 percent of the amount which (but for this paragraph) would be treated as exempt foreign trade income.

(b) FOREIGN TRADE INCOME DEFINED.—For purposes of this subpart, the term "foreign trade income" means the gross income of a FSC attributable to foreign trading gross receipts.

SEC. 924. FOREIGN TRADING GROSS RECEIPTS.

(a) IN GENERAL.—Except as otherwise provided in this section, for purposes of this subpart, the term "foreign trading gross receipts" means the gross receipts of any FSC which are—

(1) from the sale, exchange, or other disposition of export property,

(2) from the lease or rental of export property for use by the lessee outside the United States,

(3) for services which are related and subsidiary to—

(A) any sale, exchange, or other disposition of export property by such corporation, or

(B) any lease or rental of export property described in paragraph (2) by such corporation,

(4) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

(5) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of foreign trading gross receipts described in paragraph (1), (2), or (3).

Paragraph (5) shall not apply to a FSC for any taxable year unless at least 50 percent of its gross receipts for such taxable year is derived from activities described in paragraph (1), (2), or (3).

(b) FOREIGN MANAGEMENT AND FOREIGN ECONOMIC PROCESS REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2)—

(A) a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of such corporation during such taxable year takes place outside the United States as required by subsection (c), and

(B) a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by subsection (d).

(2) EXCEPTION FOR SMALL FSC.—

(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any small FSC.

(B) LIMITATION ON AMOUNT OF FOREIGN TRADING GROSS RECEIPTS OF SMALL FSC TAKEN INTO ACCOUNT.—

(i) IN GENERAL.—Any foreign trading gross receipts of a small FSC for the taxable year which exceed $5,000,000 shall not be taken into account in determining the exempt foreign trade income of such corporation and shall not be taken into account under any other provision of this subpart.

(ii) ALLOCATION OF LIMITATIONS.—If the foreign trading gross receipts of a small FSC exceed the limitation of clause (i), the corporation may allocate such limitation among such gross receipts in such manner as it may select (at such time and in such manner as may be prescribed in regulations).

(iii) RECEIPTS OF CONTROLLED GROUP AGGREGATED.—For purposes of applying clauses (i) and (ii), all small FSC's which are members of the same controlled group of corporations shall be treated as a single corporation.

(iv) ALLOCATION OF LIMITATION AMONG MEMBERS OF CONTROLLED GROUP.—The limitation under clause (i) shall be allocated among the foreign trading gross receipts of small FSC's which are members of the same controlled group of corporations in a manner provided in regulations prescribed by the Secretary.

(c) REQUIREMENT THAT FSC BE MANAGED OUTSIDE THE UNITED STATES.—The management of a FSC meets the requirements of this subsection for the taxable year if—

(1) all meetings of the board of directors of the corporation, and all meetings of the shareholders of the corporation, are outside the United States.

(2) the principal bank account of the corporation is maintained outside the United States at all times during the taxable year, and

(3) all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed out of bank accounts of the corporation maintained outside the United States.

(d) REQUIREMENT THAT ECONOMIC PROCESSES TAKE PLACE OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to the gross receipts of a FSC derived from any transaction if—

(A) such corporation (or any person acting under a contract with such corporation) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

(B) the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

(2) ALTERNATIVE 85-PERCENT TEST.—A corporation shall be treated as satisfying the requirements of paragraph (1)(B) with respect to any transaction if, with respect to each of at least 2 paragraphs of subsection (e), the foreign direct costs incurred by such corporation attributable to activities described in such paragraphs equal or exceed 85 percent of the total direct costs attributable to activities described in such paragraph.

(3) DEFINITIONS.—For purposes of this subsection—

(A) TOTAL DIRECT COSTS.—The term "total direct costs" means, with respect to any transaction, the total direct costs incurred by the FSC attributable to activities described in subsection (e) performed at any location by the FSC or any person acting under a contract with such FSC.

(B) FOREIGN DIRECT COSTS.—The term "foreign direct costs" means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

(4) RULES FOR COMMISSIONS, ETC.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (e) in the case of commissions, rentals, and furnishing of services.

(e) ACTIVITIES RELATING TO DISPOSITION OF EXPORT PROPERTY.—The activities referred to in subsection (d) are—

(1) advertising and sale promotion,

(2) the processing of customer orders and the arranging for delivery of the export property,

(3) transportation from the time of acquisition by the FSC (or, in the case of a commission relationship, from the beginning of such relationship for such transaction) to the delivery to the customer,

(4) the determination and transmittal of a final invoice or statement of account and the receipt of payment, and

(5) the assumption of credit risk.

(f) CERTAIN RECEIPTS NOT INCLUDED IN FOREIGN TRADING GROSS RECEIPTS.—

(1) CERTAIN RECEIPTS EXCLUDED ON BASIS OF USE; SUBSIDIZED RECEIPTS AND RECEIPTS FROM RELATED PARTIES EXCLUDED.—The term "foreign trading gross receipts" shall not include receipts of a FSC from a transaction if—

(A) the export property or services—

(i) are for ultimate use in the United States, or

(ii) are for use by the United States or any instrumentality thereof and such use of export property or services is required by law or regulation,

(B) such transaction is accomplished by a subsidy granted by the United States or any instrumentality thereof, or

(C) such receipts are from another FSC which is a member of the same controlled group of corporations of which such corporation is a member.

(2) INVESTMENT INCOME; CARRYING CHARGES.—The term "foreign trading gross receipts" shall not include any investment income or carrying charges.

SEC. 925. TRANSFER PRICING RULES.

(a) IN GENERAL.—In the case of a sale of export property to a FSC by a person described in section 482, the taxable income of such FSC and such person shall be based upon a transfer price which would allow such FSC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC,

(2) 23 percent of the combined taxable income of such FSC and such person which is attributable to the foreign trading gross receipts derived from the sale of such property by such FSC, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

Paragraphs (1) and (2) shall apply only if the FSC meets the requirements of subsection (c) with respect to the sale.

(b) RULES FOR COMMISSIONS, RENTALS, AND MARGINAL COSTING.—The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a FSC is seeking to establish or maintain a market for export property.

(c) REQUIREMENTS FOR USE OF ADMINISTRATIVE PRICING RULES.—A sale by a FSC meets the requirements of this subsection if—

(1) all of the activities described in section 924(e) attributable to such sale, and

(2) all of the activities relating to the solicitation (other than advertising), negotiation, and making of the contract for such sale,

have been performed by such FSC (or by another person acting under a contract with such FSC).

(d) LIMITATION ON GROSS RECEIPTS PRICING RULE.—The amount determined under subsection (a)(1) with respect to any transaction shall not exceed 2 times the amount which would be determined under subsection (a)(2) with respect to such transaction.

(e) TAXABLE INCOME.—For purposes of this section, the taxable income of a FSC shall be determined without regard to section 921.

(f) SPECIAL RULE FOR COOPERATIVES.—In any case in which a qualified cooperative sells export property to a FSC, in computing the combined taxable income of such FSC and such organization for purposes of subsection (a)(2), there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

SEC. 926. DISTRIBUTIONS TO SHAREHOLDERS.

(a) DISTRIBUTIONS MADE FIRST OUT OF FOREIGN TRADE INCOME.—For purposes of this title, any distribution to a shareholder of a FSC by such FSC which is made out of earnings and profits shall be treated as made—

(1) first, out of earnings and profits attributable to foreign trade income, to the extent thereof, and

(2) then, out of any other earnings and profits.

(b) DISTRIBUTIONS BY FSC TO NONRESIDENT ALIENS AND FOREIGN CORPORATIONS TREATED AS UNITED STATES CONNECTED.—For purposes of this title, any distribution by a FSC which is made out of earnings and profits attributable to foreign trade income to any shareholder of such corporation which is a foreign corporation or a nonresident alien individual shall be treated as a distribution—

(1) which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States, and

(2) of income which is derived from sources within the United States.

(c) FSC INCLUDES FORMER FSC.—For purposes of this section the term "FSC" includes a former FSC.

SEC. 927. OTHER DEFINITIONS AND SPECIAL RULES.

(a) EXPORT PROPERTY.—For purposes of this subpart—

(1) IN GENERAL.—The term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a FSC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) EXCLUDED PROPERTY.—The term "export property" shall not include—

(A) property leased or rented by a FSC for use by any member of a controlled group of corporations of which such FSC is a member,

(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

(C) oil or gas (or any primary product thereof), or

(D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy).

(3) PROPERTY IN SHORT SUPPLY.—If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall not be treated as export property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(4) QUALIFIED COOPERATIVE.—The term "qualified cooperative" means any organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products.

(b) GROSS RECEIPTS.—

(1) IN GENERAL.—For purposes of this subpart, the term "gross receipts" means—

(A) the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and

(B) gross income from all other sources.

(2) GROSS RECEIPTS TAKEN INTO ACCOUNT IN CASE OF COMMISSIONS.—In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this subpart as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(c) INVESTMENT INCOME.—For purposes of this subpart, the term "investment income" means—

(1) dividends,

(2) interest,

(3) royalties,

(4) annuities,

(5) rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States),

(6) gains from the sale or exchange of stock or securities,

(7) gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange (other than gains which arise out of bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by other),

(8) amounts includible in computing the taxable income of the corporation under part I of subchapter J, and

(9) gains from the sale or other disposition of any interest in an estate or trust.

(d) OTHER DEFINITIONS.—For purposes of this subpart—

(1) CARRYING CHARGES.—The term "carrying charges" means—

(A) carrying charges, and

(B) under regulations prescribed by the Secretary, any amount in excess of the price for an immediate cash sale and any other unstated interest.

(2) TRANSACTION.—

(A) IN GENERAL.—The term "transaction" means—

(i) any sale, exchange or other disposition,

(ii) any lease or rental, and

(iii) any furnishing of services

(B) GROUPING OF TRANSACTIONS.—To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

(3) UNITED STATES DEFINED.—The term "United States" includes the Comnmonwealth of Puerto Rico.

(4) CONTROLLED GROUP OF CORPORATIONS.—The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(B) section 1563(b) shall not apply.

(5) POSSESSIONS.—The term "possession of the United States" means Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(6) SECTION 923(a)(2) NON-EXEMPT INCOME.—The term "section 923(a)(2) nonexempt income" means any foreign trade income from a transaction with respect to which paragraph (1) or (2) of section 925(a) does not apply and which is not exempt foreign trade income.

(e) SPECIAL RULES.—

(1) SOURCE RULES FOR RELATED PERSONS.—Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section

994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

(2) Participation in international boycotts, etc.—Under regulations prescribed by the Secretary, the exempt foreign trade income of a FSC for any taxable year shall be limited under rules simlar to the rules of clauses (i) and (ii) of section 995(b)(1)(F).

(3) Exchange of information requirements.—For purposes of this title, the term "FSC" shall not include any corporation which was created or organized under the laws of any foreign country unless, at the time such corporation was created or organized, there was in effect between such country and the United States—

(A) a bilateral or multilateral agreement described in section 274(h)(6)(C), or

(B) an income tax treaty with respect to which the Secretary certifies that the exchange of information program with such country under such treaty carries out the purposes of this paragraph.

(4) Disallowance of treaty benefits.—Any corporation electing to be treated as a FSC under subsection (f)(1) may not claim any benefits under any income tax treaty between the United States and any foreign country.

(5) Exemption from certain other taxes.—No tax shall be imposed by any jurisdiction described in subsection (d)(5) on any foreign trade income derived before January 1, 1987.

(f) Election of Status as FSC (and as Small FSC).——

(1) Election.——

(A) Time for making.—An election by a corporation under section 922(a)(2) to be treated as a FSC, and an election under section 922(b)(1) to be a small FSC, shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Manner of election.—An election under subparagraph (A) shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election.—If a corporation makes an election under paragraph (1), then the provisions of this subpart shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years.

(3) Termination of election.—

(A) Revocation.—An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and

for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) CONTINUED FAILURE TO BE A FSC.—If a corporation is not a FSC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election to be a FSC shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

E. EXPORT TRADING COMPANIES

Export Trading Company Act of 1982, as amended

[15 U.S.C. 4001, 12 U.S.C. 1843, 15 U.S.C. 4011, 15 U.S.C. 6a, P.L. 97-290, as amended by P.L. 98-181 and P.L. 100-418]

TITLE I—GENERAL PROVISIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Export Trading Company Act of 1982".

FINDINGS; DECLARATION OF PURPOSE

SEC. 102. (a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increasing industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative exports programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this Act to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

DEFINITIONS

SEC. 103. (a) For purposes of this title—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that section 5 applies to unfair methods of competition, and any State antitrust or unfair competition laws.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this title.

OFFICE OF EXPORT TRADE IN DEPARTMENT OF COMMERCE

SEC. 104. The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services. The office shall establish a program to encourage and assist the operation of other export intermediaries, including existing and newly formed export management companies.

TITLE II—BANK EXPORT SERVICES

SHORT TITLE

SEC. 201. This title may be cited as the "Bank Export Services Act."

SEC. 202. The Congress hereby declares that it is the purpose of this title to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956, the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with

similar foreign-owned institutions in the United States and abroad;

(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

(3) foster the participation by regional and smaller banks in the development of export trading companies; and

(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of the exporting company's needs.

INVESTMENTS IN EXPORT TRADING COMPANIES

SEC. 203. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) in paragraph (12)(B), by striking out "or" at the end thereof;

(2) in paragraph (13), by striking out the period at the end thereof and inserting in lieu thereof "; or"; and

(3) by inserting after paragraph (13) the following:

"(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

"(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

"(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

"(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

"(iv) The Board may disapprove any proposed investment only if—

"(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

"(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

"(III) the bank holding company fails to furnish the information required under clause (iii).

"(v) LEVERAGE.—The Board may not disapprove any proposed investment solely on the basis of the anticipated or proposed asset-to-equity ratio of the export trading company with respect to which such investment is proposed, unless the anticipated or proposed annual average asset-to-equity ratio is greater than 20-to-1.

"(vi) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

"(vii) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

"(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

"(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

"(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

"(C) For purposes of this paragraph, an export trading company—

"(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and "(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

"(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

"(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of ownership in one or more export trading companies.

"(F) For purposes of this paragraph—

"(i) the term 'export trading company' means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

"(ii) the term 'export trade services' includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or service produced in the United States;

"(iii) the term 'bank holding company' shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

"(iv) the term 'extension of credit' shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

"(G) DETERMINATION OF STATUS AS EXPORT TRADING COMPANY.—

"(i) TIME PERIOD REQUIREMENTS.—For purposes of determining whether an export trading company is operated principally for the purposes described in subparagraph (F)(i)—

"(I) the operations of such company during the 2-year period beginning on the date such company commences operations shall not be taken into account in making any such determination; and

"(II) not less than 4 consecutive years of operations of such company (not including any portion of the period referred to in subclause (I)) shall be taken into account in making any such determination.

"(ii) EXPORT REVENUE REQUIREMENTS.—A company shall not be treated as operated principally for the purposes described in subparagraph (F)(i) unless—

"(I) the revenues of such company from the export, or facilitating the export, of goods or services produced in the United States exceed the revenues of such company from the import, or facilitating the import, into the United States of goods or services produced outside the United States; and

"(II) at least ⅓ of such company's total revenues are revenues from the export, or facilitating the export, of goods or services produced in the United States by persons not affiliated with such company.

"(H) INVENTORY.—

"(i) NO GENERAL LIMITATION.—The Board may not prescribe by regulation any maximum dollar amount limitation on the value of goods which an export trading company may maintain in inventory at any time.

"(ii) SPECIFIC LIMITATION BY ORDER.—Notwithstanding clause (i), the Board may issue an order establishing a maximum dollar amount limitation on the value of goods which a particular export trading company may maintain in inventory at any time (after such company has been operating for a reasonable period of time) if the Board finds that, under the facts and circumstances, such limitation is necessary to prevent risks that would affect the financial or managerial resources of an investor bank holding company to an extent which would be likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company.".

Sec. 205. On or before two years after the date of the enactment of this Act, the Federal Reserve Board shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives the Board's recommendations with respect to the implementation of this section, the Board's recommendations on any changes in United States law to facilitate the financing of United States exports, especially by small, medium-size, and minority business concerns, and the Board's recommendations on the effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in the United States.

GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY

Sec. 206. The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 4(c)(14)(F)(i) of the Bank Holding Company Act of 1956, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

BANKERS' ACCEPTANCES

Sec. 207. The seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372) is amended to read as follows:

"(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as 'institutions'), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

"(i) which grow out of transactions involving the importation or exportation of goods;

"(ii) which grow out of transactions involving the domestic shipment of goods; or

"(iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

"(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus, or in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

"(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

"(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic transaction, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

"(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

"(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

"(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution

shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction."

TITLE III—EXPORT TRADE CERTIFICATES OF REVIEW

EXPORT TRADE PROMOTION DUTIES OF SECRETARY OF COMMERCE

SEC. 301. To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

APPLICATION FOR ISSUANCE OF CERTIFICATE OF REVIEW

SEC. 302. (a) To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 310.

(b)(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application.

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

ISSUANCE OF CERTIFICATE

SEC. 303. (a) A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or

services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certification applies.

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 302(b)(1).

(d)(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

(e) If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

REPORTING REQUIREMENT; AMENDMENT OF CERTIFICATE; REVOCATION OF CERTIFICATE

SEC. 304. (a)(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b)(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 303(a), the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 303(a), or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 303(a).

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 3 of the Antitrust Civil Process Act, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

JUDICIAL REVIEW; ADMISSIBILITY

SEC. 305. (a) If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 304(b), any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this title shall be subject to judicial review.

(c) If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

PROTECTION CONFERRED BY CERTIFICATE OF REVIEW

SEC. 306. (a) Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 303 which certificate was in effect when the conduct occurred.

(b)(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 303(a). Any action commenced under this title shall proceed as if it were an action commenced under section 4 or section 16 of the Clayton Act, except that the standards of section 303(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 303(a) but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 303(a).

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 303(a), the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 15 of the Clayton Act (15 U.S.C. 25) to enjoin conduct threatening clear and irreparable harm to the national interest.

GUIDELINES

SEC. 307. (a) To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 303 and 304, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Section 553 of title 5, United States Code, shall not apply to the issuance of guidelines under subsection (a).

ANNUAL REPORTS

SEC. 308. Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 302(a).

DISCLOSURE OF INFORMATION

SEC. 309. (a) Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5, United States Code.

(b)(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commerical or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosue of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 310 permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

RULES AND REGULATIONS

SEC. 310. The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this Act.

DEFINITIONS

SEC. 311. As used in this title—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by

which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

EFFECTIVE DATES

Sec. 312. (a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this Act.

(a) Section 302 and section 303 shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310.

TITLE IV—FOREIGN TRADE ANTITRUST IMPROVEMENTS

SHORT TITLE

Sec. 401. This title may be cited as the "Foreign Trade Antitrust Improvements Act of 1982".

AMENDMENT TO SHERMAN ACT

Sec. 402. The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 6 the following new section:

"Sec. 7. This Act shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

"(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

"(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

"(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

"(2) such effect gives rise to a claim under the provisions of this Act, other than this section.

If this Act applies to such conduct only because of the operation of paragraph (1)(B), then this Act shall apply to such conduct only for injury to export business in the United States.".

AMENDMENT TO FEDERAL TRADE COMMISSION ACT

SEC. 403. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end thereof the following new paragraph:

"(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

"(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

"(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

"(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

"(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.".

F. EXPORT FINANCING

1. Export-Import Bank of the United States

[12 U.S.C. 635, P.L. 79-173, as amended by P.L. 79-282, P.L. 80-89, P.L. 81-158, P.L. 83-30, P.L. 83-570, P.L. 83-779, P.L. 88-55, P.L. 85-424, P.L. 87-311, P.L. 88-101, P.L. 89-348, P.L. 89-438, P.L. 90-267, P.L. 92-126, P.L. 93-331, P.L. 93-374, P.L. 93-425, P.L. 93-450, P.L. 93-646, P.L. 95-143, P.L. 95-407, P.L. 95-630, P.L. 96-470, P.L. 97-35, P.L. 98-109, P.L. 98-143, P.L. 98-181, P.L. 99-440, P.L. 99-472, P.L. 99-509 and P.L. 100-418]

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Subchapter I—General Provisions

[Export-Import Bank Act of 1945, as amended]

SEC. 635. POWERS AND FUNCTIONS OF BANK.

(a) General banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information

(1) There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the Bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the Bank. The Bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of Title 44 whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable. The Bank may impose and collect reasonable fees to cover the costs of conferences and seminars sponsored by, and publications provided by, the Bank. Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities. The Bank is authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or bor-

rowed by it in the exercise of its functions. Net earnings of the Bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2) In order for the Bank to be competitive in all of its financing programs with countries whose exports compete with United States exports, the Bank shall establish a program that—

(A) provides medium-term financing where necessary to be fully competitive—

(i) at rates of interest to the customer which are equal to rates established in international agreements; and

(ii) in amounts up to 85 percent of the total cost of the exports involved; and

(B) enables the Bank to cooperate fully with the Secretary of Commerce and the Administrator of the Small Business Administration to develop a program for purposes of disseminating information (using existing private institutions) to small business concerns regarding the medium-term financing provided under this paragraph.

(3) ENHANCEMENT OF MEDIUM-TERM PROGRAM.—

(A) IN GENERAL.—To enhance the medium-term financing program established pursuant to paragraph (2), the Bank shall establish measures to—

(i) improve the competitiveness of the Bank's medium-term financing and ensure that its medium-term financing is fully competitive with that of other major official export credit agencies;

(ii) ease the administrative burdens and procedural and documentary requirements imposed on the users of medium-term financing;

(iii) attract the widest possible participation of private financial institutions and other sources of private capital in the medium-term financing of United States exports; and

(iv) render the Bank's medium-term financing as supportive of United States exports as is its Direct Loan Program.

(B) REPORT REQUIRED.—Not later than April 15, 1988, the Bank shall transmit a report to the Congress analyzing the measures adopted to enhance medium-term financing.

(b) Guarantees, insurance and extension of credit functions; competitive with Government-supported rates and terms and conditions for foreign exporting countries; survey and report; interest rates; private capital encouragement; national interest determinations; delivery of United States services in international commerce; small business concern encouragement; coverage of losses by Foreign Credit Insurance Association; loans to Union of Soviet Socialist Republics for fossil fuel research, etc.; nuclear safeguards violations resulting in limitations on exports and credit; defense article credit sales to less developed countries; amount outstanding; supplementation of Commodity Credit Corporation programs; prohibitions respecting Republic of South Africa; limitations on authority of Bank

(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective in all its programs, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on an annual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with the United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly on indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report required by this subparagraph. The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

(B) It is further the policy of the United States that loans made by the Bank in all its programs shall bear interest at rates determined by the Board of Directors, consistent with the Bank's mandate to support United States exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements. For the purpose of the preceding sentence, rates, terms and conditions need not be identical in all respects to those offered by foreign countries, but should be established so that the effect of such rates, terms, and conditions for all the Bank's programs, including those for small businesses and for medium-term financing, will be to neutralize the effect of such foreign credit on international sales competition. The Bank shall consider its average cost of money as one factor in its determination of interest rates, where such consideration does not impair the Bank's primary function of expanding United States exports through fully competitive financing. The Bank may not impose a credit application fee unless (i) the fee is competitive with the average fee charged by the Bank's primary foreign competitors, and (ii) the borrower or the exporter is given the option of paying the fee at the outset of the loan or over the life of the loan and the present value of the fee determined under either such option is the same amount. It is also the policy of the United States that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank shall accord equal opportunity to export agents and managers, independent export firms export trading companies, and small commercial banks in the formulation and implementation of its programs; that the Bank shall give due recognition to the policy stated in section 631(a) of Title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise" and that in furtherance of this policy the Board of Directors shall designate an officer of the Bank who shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns and who, among other duties, shall be responsible for advising small businessmen of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives; that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.

(C) Consistent with the policy of section 3261 of Title 22 and section 2151q of Title 22, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies.

(D)(i) It is further the policy of the United States to foster the delivery of United States services in international commerce. It exercising its powers and functions, the Bank shall give full and equal consideration to making loans and providing guarantees for the export of services (independently, or in conjunction with the export of manufactured goods, equipment, hardware or other capital goods) consistent with the Bank's policy to neutralize foreign subsidized credit competiton and to supplement the private capital market.

(ii) The Bank shall include in its annual report a summary of its programs regarding the export of services.

(E)(i)(I) It is further the policy of the United States to encourage the participation of small business in international commerce.

(II) In exercising its authority, the Bank shall develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.

(ii) It is further the policy of the United States that the Bank shall give due recognition to the policy stated in section 631(a) of Title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise".

(iii) In furtherance of the policy, the Board of Directors shall designate an officer of the Bank who—

(I) shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns; and

(II) among other duties, shall be responsible for advising small business concerns of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

(iv) The Director appointed to represent the interests of small business under section 635a(c) of this title shall ensure that the Bank carries out its responsibilities under clauses (ii) and (iii) of this subparagraph and that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs.

(v) To assure that the purposes of clauses (i) and (ii) of this subparagraph are carried out, the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports by small business concerns (as defined under section 632 of Title 15) which shall be not less than—

(I) 6 per centum of such authority for fiscal year 1984;

(II) 8 per centum of such authority for fiscal year 1985; and

(III) 10 per centum of such authority for fiscal year 1986 and thereafter.

(vi) The Bank shall utilize the amount set aside pursuant to clause (v) of this subparagraph to offer financing for small business exports on terms which are fully competitive with regard to interest rates and with regard to the portion of financing which may be provided, guaranteed, or insured. Financing under this clause (vi) shall be available without regard to whether financing for the particular transaction was disapproved by any other Federal agency.

(vii)(I) The Bank shall utilize a part of the amount set aside pursuant to clause (v) to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies (as defined in section 662 of Title 15), or other financing institutions or entities in order to finance small business exports.

(II) Financing under this clause (vii) shall be made available only where the consortia or the participating institutions agree to undertake processing, servicing, and credit evaluation functions in connection with such financing.

(III) To the maximum extent practicable, the Bank shall delegate to the consortia the authority to approve financing under this clause (vii).

(IV) In the administration of the program under this clause (vii), the Bank shall provide appropriate technical assistance to participating consortia and may require such consortia periodically to furnish information to the Bank regarding the number and amount of loans made and the creditworthiness of the borrowers.

(viii) In order to assure that the policy stated in clause (i) is carried out, the Bank shall promote small business exports and its small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies, and private industry.

(ix) The Bank shall provide, through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organizations, medium-term risk protection coverage for the members and clients of such organizations. Such coverage shall be made available to each such organization under a single risk protection policy covering its members or clients. Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.

(F) Consistent with international agreements, the Bank shall urge the Foreign Credit Insurance Association to provide coverage against 100 per centum of any loss with respect to exports having a value of less than $100,000.

(G) Participation in or access to long-, medium-, and short-term, financing, guarantees, and insurance provided by the Bank shall not be denied solely because the entity seeking participation or access is not a bank or is not a United States person.

(2) PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.—

(A) IN GENERAL.—The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit—

(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Marxisit-Leninist country.

(B) MARXIST-LENINIST COUNTRY DEFINED.—

(i) IN GENERAL.—For the purposes of this paragraph, the term "Marxist-Leninist country" means any country which—

(I) maintains a centrally planned economy based on the principles of Marxist-Leninism, or

(II) is economically and militarily dependent on the Union of Soviet Socialist Republics or on any other Marxist-Leninist country.

(ii) SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in the manner provided in subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

Cambodian People's Republic.
Cooperative Republic of Guyana.
Czechoslovak Socialist Republic.
Democratic People's Republic of Korea.
Democratic Republic of Afghanistan.
Estonia.
German Democratic Republic.
Hungarian People's Republic.
Lao People's Democratic Republic.
Latvia.
Lithuania.
Mongolian People's Republic.
People's Democratic Republic of Yemen.
People's Republic of Albania.
People's Republic of Angola.
People's Republic of Benin.
People's Republic of Bulgaria.

People's Republic of China.
People's Republic of the Congo.
People's Republic of Mozambique.
Polish People's Republic.
Republic of Cuba.
Republic of Nicaragua.
Socialist Ethiopia.
Socialist Federal Republic of Yugoslavia.
Socialist Republic of Romania.
Socialist Republic of Vietnam.
Surinam.
Tibet.
Union of Soviet Socialist Republics (including its captive constituent republics).

(C) PRESIDENTIAL DETERMINATION THAT A COUNTRY HAS CEASED TO BE MARXIST-LENINIST.—If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.

((D) PRESIDENTIAL DETERMINATION RELATING TO FINANCING IN THE NATIONAL INTEREST.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

(ii) SEPARATE DETERMINATION FOR CERTAIN TRANSACTIONS.—The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) of subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than $50,000,000.

(iii) REPORT OF CLAUSE (i) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (i) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after the date of the enactment of the Export-Import Bank Amendments of 1974, unless a report of a determination with respect to such country, agency, or national was made and reported before such date of enactment.

(iv) REPORT OF CLAUSE (ii) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause

(ii) shall be reported to the Congress not later than the earlier of—

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

(3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or general guarantee or insurance facility or combination thereof (i) in an amount which equals or exceeds $100,000,000, (ii) in an amount which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics, or (iii) for the report of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25-day period referred to in such sentence. Such statement shall contain—

(A) in the case of a loan or financial guarantee—

(i) a brief description of the purposes of the transaction;

(ii) the identity of the party or parties requesting the loan or financial guarantee;

(iii) the nature of the goods or services to be exported and the use for which the goods or services are to be exported; and

(iv) in the case of a general guarantee or insurance facility—

(I) a description of the nature and purpose of the facility:

(II) the total amount of guarantees or insurance; and

(III) the reasons for the facility and its methods of operation; and

(B) a full explanation of the reasons for Bank financing of the transaction, the amount of the loan to be provided by the Bank, the approximate rate and repayment terms at which such loan will be made available and the approximate amount of the financial guarantee.

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.

(4) The Secretary of State shall report to the appropriate committess of Congress and to the Board of Directors of the Export-Import Bank if the Secretary determines that any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards or that any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement or that any country that is not a nuclear-weapons state (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons) detonates, after October 26, 1977, a nuclear explosive device. The Secretary shall specify which country or countries the Secretary has determined to have so acted, and the Board shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country unless the President determines that it is in the national interest for the Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country and such determination has been reported to the Congress not less than twenty-five days of continuous session of the Congress prior to the date of such approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the twenty-five day period referred to in such sentence.

(5) The Bank shall not guarantee, insure, or extend credit, or participate in the extension of credit in connection with (A) the purchase of any product, technical data, or other information by a national or agency of any nation which engages in armed conflict, declared or otherwise, with the Armed Forces of the United States, (B) the purchase by any nation (or national or agency thereof) of any product, technical data, or other information which is to be used principally by or in any such nation described in clause (A) or (C) the purchase of any liquid metal fast breeder nuclear reactor or any nuclear fuel reprocessing facility. The Bank shall not guarantee insure, or extend credit, or participate in the extension of credit in connection with the purchase of any product, technical data, or other information by a national or agency of any nation if the President determines that any such transaction would be contrary to the national interest.

(6) The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country designated under section 4916 of Title 26 as an economically less developed country for purposes of the tax imposed by section 4911 of Title 26. The prohibitions set forth in this paragraph shall not

apply with respect to any transaction the consummation of which the President determines would be in the national interest and reports such determination (within thirty days after making the same) to the Senate and House of Representatives. In making any such determination the President shall take into account, among other considerations, the national interest in avoiding arms races among countries not directly menaced by the Soviet Union or by Communist China; in avoiding arming military dictators who are denying social progress to their own peoples; and in avoiding expenditures by developing countries of scarce foreign exchange needed for peaceful economic progress.

(7) In no event shall the Bank have outstanding at any time in excess of 7½ per centum of the limitation imposed by section 635e of this title for such guarantees, insurance, credits or participation in credits with respect to exports of defense articles and services to countries which, in the judgment of the Board of Directors of the Bank, are less developed.

(8) The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with paragraph (1)(A) of this subsection, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the report to Congress under section 635g(a) of this title a description of the measures undertaken by it pursuant to this subsection.

(9)(A) Except as provided in subparagraph (B), in no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchasers in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities.

(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other nonwhite South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports to or purchases from business enterprises which are majority owned by South African blacks or other nonwhite South Africans.

(10)(A) The Bank shall not, without a specific authorization by law, guarantee, insure, or extend credit (or participate in the extension of credit) to—

(i) assist specific countries with balance of payments financing; or

(ii) assist (as the primary purpose of any such guarantee, insurance, or credit) any country in the management of its international indebtedness, other than its outstanding obligations to the Bank.

(B) Nothing contained in subparagraph (A) shall preclude guarantees, insurance, or credit the primary purpose of which is to support United States exports.

(11) Prohibition Relating to Angola.—Notwithstanding any determination by the President under paragraph (2), the Bank may not guarantee, insure, or extend credit (or participate in the extension of credit) in connection with any export of goods or services, except food or agricultural commodities, to the People's Republic of Angola until the President certifies to the Congress that no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country (as such term is defined in paragraph (2)(B)) remain in Angola.

(c) Guarantees, insurance, coinsurance, and reinsurance functions; fractional charge; aggregate outstanding amount; fees and premiums; issuance, service and adjustments by agents

(1) The Bank is authorized and empowered to charge against the limitations imposed by section 635e of this title, not less than 25 per centum of the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss. The aggregate amount of guarantees, insurance, coinsurance, and reinsurance which may be charged on this fractional basis pursuant to this section shall not exceed $25,000,000,000 outstanding at any one time. Fees and premiums shall be charged in connection with such contracts commensurate, in the judgment of the Bank, with risks covered.

(2) The Bank may issue such guarantees, insurance, coinsurance, and reinsurance to or with exporters, insurance companies, finan-

cial institutions, or others, or groups thereof, and where appropriate may employ any of the same to act as its agent in the issuance and servicing of such guarantees, insurance, coinsurance, and reinsurance, and the adjustment of claims arising thereunder.

(3) TRANSFERABILITY OF GUARANTEES.—With respect to medium-term and long-term obligations insured or guaranteed by the Bank after the date of the enactment of the Export-Import Bank Act Amendments of 1986, the Bank shall authorize the unrestricted transfer of such obligations by the originating lenders or their transferees to other lenders without affecting, limiting, or terminating the guarantee or insurance provided by the Bank.

(d) Equal and nondiscriminatory opportunities for domestic companies to bid for insurance

(1) In carrying out its responsibilities under this chapter, the Bank shall work to ensure that United States companies are afforded an equal and nondiscriminatory opportunity to bid for insurance in connection with transactions assisted by the Bank.

(2) In furtherance of such effort, the Chairman of the Bank shall review Bank policies and programs in regard to this issue, and in coordination with the United States Trade Representative and the appropriate agencies of the Department of State, the Department of the Treasury, and the Department of Commerce, undertake actions designed to promote equal and nondiscriminatory opportunities to bid for insurance in connection with all aspects of international trade activities.

(3) The Bank shall report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than May 15, 1984, regarding—

(A) the existing obstacles to equal and nondiscriminatory bidding for insurance related to transactions assisted by the Bank;

(B) the efforts that the Bank has taken in addressing such problems; and

(C) recommendations for such legislative or administrative actions as the Bank considers necessary.

(e) Limitation on assistance which adversely affect the United States

(1) IN GENERAL.—The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if—

(A) the Bank determines that—

(i) the commodity is likely to be in surplus on world markets at the time the commodity will first be sold; or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

(2) EXCEPTION.—Paragraph (1) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short-

and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment of the same, similar, or competing commodity.

"(3) DEFINITION.—For purposes of paragraph (1)(B), the extension of any credit or guarantee by the Bank will cause substantial injury if the amount of the capacity for production established, or the amount of the increase in such capacity expanded, by such credit or guarantee equals or exceeds 1 percent of United States production.".

(f) Interest subsidy payments

(1) PAYMENTS AUTHORIZED.—The Bank may enter into commitments to make payments to commercial lending institutions and other lenders, in such amounts as the Bank may determine to be appropriate, to provide a sufficient return on loans by such lenders (including loans guaranteed by the Bank) in support of United States exports (of goods or services) when financing at less than market rates is required for such exports in order to respond to subsidized financing offered by foreign export credit agencies.

(2) AUTHORITY TO MAKE PAYMENTS SUBJECT TO MINIMUM AMOUNT OF DIRECT LOAN AUTHORITY.—The authority to enter into commitments to make interest subsidy payments under paragraph (1) shall be effective for any fiscal year only if the aggregate principal amount of direct loans the Bank may obligate in such fiscal year is equal to or greater than $700,000,000.

(3) PAYMENTS ALLOWED ONLY FROM FUNDS APPROPRIATED FOR SUCH PURPOSE.—The estimated aggregate amount of commitments entered into by the Bank under paragraph (1) in any fiscal year beginning after fiscal year 1986 may not exceed the amount of funds appropriated to the Bank for such purposes for such fiscal year.

(4) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), there are authorized to be appropriated to the Bank, for any fiscal year beginning after fiscal year 1986, such sums as may be necessary to carry out the purposes of this subsection.

(B) BUDGET SCORING.—No amount is authorized to be appropriated for commitments to make interest subsidy payments on loans for which the Bank extends a loan guarantee commitment if any amount of such loan guarantee commitment is scored as budget authority in any estimate of budget authority prepared pursuant to any provision of the Congressional Budget and Impoundment Control Act of 1974.

(5) SUNSET PROVISION.—The authority to enter into commitments to make interest subsidy payments shall lapse on October 1, 1988.

SEC. 635a. MANAGEMENT OF BANK.

(a) Establishment as independent agency

The Export-Import Bank of the United States shall constitute an independent agency of the United States and neither the Bank nor any of its functions, powers, or duties shall be transferred to or consolidated with any other department, agency, or corporation of the Government unless the Congress shall otherwise by law provide.

(b) President and First Vice President of the Bank; appointment; duties

There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall serve ~~as Pres~~ident of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

(c) Board of Directors; composition; oath; terms; duties; quorum; bylaws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) [Omitted.]

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A majority of the Board of Directors shall constitute a quorum.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8)(A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States.

(ii) the term of any director appointed after the date of enactment of this paragraph to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

(i) the date on which such director's successor is qualified; or

(ii) the end of the 6-month period beginning on the date such director's term expires.

(d) Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress

(1)(A) There is established an Advisory Committee to consist of twelve members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its programs, and shall submit, with the report specified in section 635(b)(1)(A) of the title, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide competitive financing to expand United States exports, and any suggestions for improvements in this regard.

(e) Conflicting personal interests

No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

SEC. 635a-1. EXPORT CREDIT COMPETITION.

(a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations.

SEC. 635a-2. IMPLEMENTATION OF REGULATIONS AND PROCEDURES TO LESSEN ADVERSE EFFECT OF LOANS AND GUARANTEES ON INDUSTRIES IN UNITED STATES: REPORT BY UNITED STATES INTERNATIONAL TRADE COMMISSION.

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment. After October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. In all cases to which this section applies, the Bank shall consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on the loan or guarantee. This requirement does not subject the Bank to the provisions of subchapter II of chapter 5 of title 5, United States Code.

SEC. 635a.-3. EXPORT-IMPORT BANK FINANCING TO MATCH FOREIGN FINANCING.

(a) Noncompetitive financing; inquiry by Secretary; notification of foreign country and prospective parties to transaction

(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered. The inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, the Secretary shall request the im-

mediate withdrawal of such financing by the foreign official export credit agency involved.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) Issuance of authorization to Bank to provide guarantees, insurance, and credits to competing United States sellers

The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, unless the Secretary determines that—

(1) the availability of foreign official noncompetitive financing is not likely to be a significant factor in the sale; or

(2) the foreign noncompetitive financing has been withdrawn.

(c) Provision of financing by Bank pursuant to authorization

Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however,* That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended [12 U.S.C.A. § 635 et seq.].

SEC. 635a-4. GUARANTEES FOR EXPORT ACCOUNTS RECEIVABLE AND INVENTORY (P.L. 97-290, SEC. 206, AMENDED BY P.L. 98-181, SEC. 616(b)).

The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 1843(c)(14)(F)(i) of this title, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

(1) the private credit market is not providing adequate financing to enable otherwise creditworthy export trading companies or exporters to consummate export transactions; and

(2) such guarantees would facilitate expansion of exports which would not otherwise occur.

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

SEC. 635b. CAPITALIZATION OF BANK; METHOD OF CAPITAL STOCK PAYMENTS; PUBLIC-DEBT TRANSACTIONS; ISSUANCE OF STOCK CERTIFICATES.

The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Payment for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock issued prior to July 31, 1945, by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the preferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under chapter 31 of Title 31 (the Second Liberty Bond Act) and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.

SEC. 635c. REIMBURSEMENT OF THE RECONSTRUCTION FINANCE CORPORATION FOR CANCELLATION OF BANK STOCK; PUBLIC DEBT TRANSACTIONS; PAYMENT OF ACCUMULATED DIVIDENDS.

(a) The Secretary of the Treasury shall pay to the Reconstruction Finance Corporation the par value of the preferred stock upon its surrender to the Bank for cancellation. For the purpose of making such payments to the Reconstruction Finance Corporation the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Act are extended to include such purpose. Payment under this subsection to the Reconstruction Finance Corporation shall be treated as public-debt transactions of the United States.

(b) Any dividends on the preferred stock accumulated and unpaid to the date of its surrender for cancellations shall be paid to the Reconstruction Finance Corporation by the Bank.

SEC. 635d. ISSUANCE OF DEBENTURES, BONDS, ETC.; OBLIGATIONS REDEEMABLE; PAYMENT OF INTEREST; OBLIGATIONS PURCHASABLE BY SECRETARY OF TREASURY; PUBLIC-DEBT TRANSACTIONS.

The Export-Import Bank of the United States is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $6,000,000,000. Such obligations shall be redeemable at the option of the Bank before maturity in such manner as may be stipulated in such obligations and shall have such maturity as may be determined by the Board of Directors of the Bank with the approval of the Secretary of the Treasury. Each such Bank obligation issued to the Treasury after January 4, 1975, shall bear interest at a rate not less than the current average yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation of the Bank as determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Bank issued hereunder and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this section of the purchase price of such obligations of the Bank and repayments thereof by the Bank shall be treated as public-debt transactions of the United States.

SEC. 635e. RESTRICTIONS ON AMOUNT OUTSTANDING; PRESIDENTIAL DETERMINATION OF SUFFICIENCY OF AUTHORITY; REPORT TO CONGRESS; ELIMINATION OF EXCESS AUTHORITY; CONTINUING AVAILABILITY OF FUNDS; LIMITATION ON AMOUNT AND PURPOSES OF LOANS AND FINANCIAL GUARANTEES FOR EXPORT TO UNION OF SOVIET SOCIALIST REPUBLICS; PRESIDENTIAL INCREASE OF LIMITATION.

(a)(1) The Export-Import Bank of the United States shall not have outstanding at any one time loans, guaranties, and insurance in an aggregate amount in excess of $40,000,000,000. All spending and credit authority provided under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(2)(A)(i) Not later than March 31 of each fiscal year, the President of the United States shall determine whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, particularly those needs arising from—

(I) increases in the level of exports unforeseen at the time of the original budget request for such fiscal year;

(II) any increased foreign export credit subsidies; or

(III) the lack of progress in negotiations to reduce or eliminate export credit subsidies.

(ii) Not later than April 15 of each year, the President of the United States shall transmit to the Congress a report on such determination.

(B)(i) If the President of the United States finds that the amount of direct loan authority or guarantee authority available to the Bank for the fiscal year involved exceeds the amount which will be necessary to carry out the Bank's functions consistent with the availability of qualified applications and limitations imposed by law during such year, the President of the United States shall promptly transmit to the Congress a request for legislation to eliminate the amount of such excess direct loan, loan guarantee, or insurance authority.

(ii) The Bank shall continue to make remaining amounts of its authority available for the fiscal year involved, in accordance with its practices and the requirements of this chapter, unless otherwise directed pursuant to law.

(3) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated $145,259,000 for fiscal year 1987 to cover the subsidy cost of new direct loans obligated by the Bank in that fiscal year. Any amounts appropriated under this paragraph shall be permanent additions to the capital and reserves of the Bank.

(b) After January 4, 1975, the Bank shall not approve any loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000. No such loan or financial guarantee, or combination thereof, shall be for the purchase, lease, or procurement of any product or service for production (including processing and distribution) of fossil fuel energy resources. Not more than $40,000,000 of such aggregate amount shall be for the purchase, lease, or procurement of any product or service which involves research or exploration of fossil fuel energy resources. The President may establish a limitation in excess of $300,000,000 if the President determines that such higher limitation is in the national interest and if the President reports such determination to the Congress together with the reasons therefor, including the amount of such proposed increased which would be available for the export of products and services for research, exploration, and production (including processing and distribution) of fossil fuel energy resources in the Union of Soviet Socialist Republics, and if, after the receipt of such report together with the reasons, the Congress adopts a concurrent resolution approving such determination.

SEC. 635f. TERMINATION DATE OF BANK'S FUNCTIONS; EXCEPTIONS; LIQUIDATION.

Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 1992, but the provisions of this section shall not be construed as preventing the Bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

SEC. 635g. REPORT TO CONGRESS.

(a) Annual submission of report

The Export-Import Bank of the United States shall transmit to the Congress annually a complete and detailed report of its operations. Such report shall be as of the close of business on the last day of each fiscal year.

(b) Actions taken by Bank to aid small business

The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interests of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of Title 22 (section 501 of the Nuclear Non-Proliferation Act of 1978), and section 2151q of Title 22 (section 119 of the Foreign Assistance Act of 1961), as required by section 635(b)(1)(C) of this title.

(c) Report on allocation of sum set aside for small business exports

(1) The Bank shall include in its annual report to the Congress a report on the allocation of the sums set aside for small business exports pursuant to section 635(b)(1)(E) of this title.

(2) Such report shall specify—

(A) the total number and dollar volume of loans made from the sums set aside;

(B) the number and dollar volume of loans made through the consortia program under section 635(b)(1)(E)(vii) of this title;

(C) the amount of guarantees and insurance provided for small business exports;

(D) the number of recipients of financing from the sums set aside who have not previously participated in the Bank's programs;

(E) the number of commitments entered into in amounts less than $500,000; and

(F) any recommendations for increasing the participation of banks and other institutions in the programs authorized under section 635(b)(1)(E) of this title.

(3) For the purpose of this subsection, the Bank's report shall be transmitted to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(d) Actions taken by Bank to aid industries, preserve and create highly skilled jobs, and enhance opportunity for business growth and expansion; comments of Advisory Committee

(1) The report shall include a detailed description of all actions which have been taken by the Bank or which will be taken by the Bank—

(A) to maintain the competitive position of key linkage industries in the United States;

(B) to support industries which are engaged in the export of high value added products;

(C) to support industries which are engaged in the development of new capital goods technology;

(D) to preserve and create high skilled jobs in the United States economy; and

(E) to enhance the opportunity for growth and expansion of small businesses and entrepreneurial enterprises.

(2) Such report shall include the comments of the Advisory Committee regarding the objectives specified in paragraph (1).

(e) GAO report on interest subsidy payments

(1) Report Required.—Not later than March 1, 1988, the Comptroller General of the United States shall transmit to both Houses of the Congress a report on the manner in which and the extent to which the Bank is exercising its authority to make interest subsidy payments under section 2(f).

(2) Contents of Report.—The report required under paragraph (1) with respect to interest subsidy payments shall—

(A) compare the efficiency and competitiveness of interest subsidy payments with the efficiency and competitiveness of direct Bank financing of an equivalent value of exports;

(B) compare the cost, to the United States Government, of making interest subsidy payments and the impact of such payments on the financial condition of the Bank with the cost and impact of direct Bank financing of an equivalent value of exports;

(C) compare the impact of interest subsidy payments on the Federal budget with the impact on such budget of direct Bank financing of an equivalent value of exports; and

(D) include all views and recommendations of the Advisory Committee of the Bank which are submitted to the Comptroller General of the United States before December 1, 1987.

SEC. 635h. EXEMPTION FROM PROHIBITION OF SECTION 955 OF TITLE 18.

Notwithstanding the provisions of section 955 of Title 18, any person, including any individual, partnership, corporation, or association, may act for or participate with the Export-Import Bank of the United States in any operation or transaction, or may acquire any obligation issued in connection with any operation or transaction, engaged in by the Bank.

SEC. 635i. ASSUMPTION OF RIGHTS AND LIABILITIES OF EXISTING BANK; TRANSFER OF FUNDS, PROPERTY, PERSONNEL, ETC.; CONTINUATION OF DIRECTORS IN OFFICE.

The Export-Import Bank of the United States created by section 635(a) of this title shall by virtue of this chapter succeed to all of the rights and assume all of the liabilities of Import-Export Bank of Washington, a District of Columbia corporation, and any outstanding capital stock of the District of Columbia corporation shall be deemed to have been issued by and shall be capital stock of the corporation created by this chapter and all of the personnel, property, records, funds (including all unexpended balances of appropriations, allocations, or other funds now available), assets, contracts, obligations, and liabilities of the District of Columbia corporation are transferred to, accepted, and assumed by the corporation created by this chapter without the necessity of any act or acts on the part of the corporation created by this chapter or of the District of Columbia corporation, their officers, employees, or agents or of any other department or agency of the United States to carry out the purposes and it will be unnecessary to take any further action to effect the dissolution or liquidation of Export-Import Bank of Washington, a District of Columbia corporation. The members of the Board of Directors of the District of Columbia corporation, appointed pursuant to the provisions of this chapter, shall, during the unexpired portion of the terms for which they were appointed, continue in office as members of the Board of Directors of the corporation created by this chapter.

SEC. 651i-1. SPECIAL FACILITIES IN SUPPORT OF UNITED STATES EXPORTS.

The Bank is authorized to establish general facilities consisting of guarantees and insurance in support of export transactions to Brazil in the aggregate amount of $1,500,000,000 and to Mexico in the aggregate amount of $500,000,000. No such guarantees may be made, or insurance issued, after March 31, 1985.

SEC. 635i-2. CAPITAL LEVEL OF BANK.

After fiscal year 1983, if at the end of any fiscal quarter the value of the total capital stock and retained earnings of the Bank falls below 50 per centum of the value of the total capital stock and retained earnings of the Bank at the end of fiscal year 1983, the Board of Directors shall notify the Congress of the decrease in the level of the capital stock of the Bank not later than thirty days after the end of the fiscal quarter involved and the Congress shall take appropriate action.

SEC. 15. TIED AID CREDIT PROGRAM AND FUND. [sec. 635i-3. added by P.L. 99-472]

(a) Findings.—The Congress finds that—

(1) tied aid and partially untied aid credits offered by other countries are a predacious method of financing exports because of their market-distoring effects;

(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction;

(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes; and

(5) there should be established in the Bank a temporary tied aid program to target the export markets of those countries which make extensive use of tied aid or partially untied aid credits for commercial advantage for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established.

(b) Establishment of Tied Aid Credit Program.—

(1) In general.—For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid credit pro-

gram under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—

(A) to supplement the financing of a United States export when there is a reasonable expectation that predacious financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export;

(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

(i) engages in predacious official export financing through the use of tied aid or partially untied aid credits; and

(ii) impedes negotiations to eliminate the use of such credits for commercial purposes; or

(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

(2) ADMINISTRATION OF PROGRAM.—The tied aid credit program shall be administered by the Bank—

(A) in consultation with the Secretary of the Treasury and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes;

(B) in cooperation with private financial institutions or entities, as appropriate; and

(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

(3) COORDINATION WITH OTHER EXPORT FINANCING.—Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

(A) any guarantee, insurance, or other extension of credit provided by the Bank under this Act;

(B) any export financing provided by any private financial institution or other entity; and

(C) any other type of export financing,

in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

(4) INFORMATION ON COUNTRIES WHICH ENGAGE IN OFFICIAL PREDACIOUS EXPORT FINANCING AND IMPEDE NEGOTIATIONS.—In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary, and the National Advisory Council on International Monetary and Financial Policies.

(c) TIED AID CREDIT FUND.—

(1) IN GENERAL.—There is hereby established within the Bank a fund to be known as the "Tied Aid Credit Fund" (here-

inafter in this section referred to as the "Fund"), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e).

(2) Expenditures from fund.—Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) and to reimburse the Bank for the cost of any tied aid credits authorized by the Bank during fiscal years 1987, 1988, and 1989.

(d) Consistency With Arrangement.—Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

(e) Authorization of Appropriations.—

(1) In general.—There is hereby authorized to be appropriated to the Fund for fiscal years 1987, 1988, and 1989, $300,000,000. Except as provided in paragraph (2), such sums shall remain available until expended.

(2) Rescission authority.—

(A) Determination by president.—If the President determines that any amount appropriated to the Fund is not required to achieve the purpose of the Fund, the President shall transmit a special message of such determination to the Congress in the manner provided in section 1012(a) of the Impoundment Control Act of 1974.

(B) Special message.—Any message under this paragraph shall be treated as a special message under such section for purposes of such Act.

(f) Nonreviewability.—No action taken under this section shall be reviewable by any court, except for abuse of discretion.

(g) Report to Congress.—

(1) Report required.—Before the end of the 6-month period beginning on the date of enactment of this section and every six months thereafter, the Bank, in consultation with the Secretary, shall prepare and transmit a report on tied aid credits to the President of the Senate and the Speaker of the House of Representatives.

(2) Contents of report.—Each report required by paragraph (1) shall contain a description of—

(A) the principal offers of predacious financing by foreign countries during the course of the previous 6 months;

(B) steps taken by the United States to combat specific predacious financing practices of foreign countries;

(C) any use by the Bank of the Tied Aid Credit Fund to match specific predacious financing practices of foreign countries and to initiate tied aid credit offers;

(D) any additional steps the United States may take in the future to discourage use of predacious financing practices; and

(E) any progress achieved in negotiations to establish a comprehensive international arrangement restricting the use of tied aid and partially untied credits for commercial purposes.

(3) Confidential information.—To the extent the Bank determines any information required to be included in the report

under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

(h) DEFINITIONS.—For the purpose of this section—

(1) TIED AID AND PARTIALLY UNTIED AID CREDIT.—The terms "tied aid credit" and "partially untied aid credit" means any credit which—

(A) has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

(B) is, in fact or in effect, tied to—

(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

(ii) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit; and

(C) is financed either exclusively from public funds or partly from public and partly from private funds.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(3) ARRANGEMENT.—The term "Arrangement" means the Arrangement of Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development.

(4) BLENDED FINANCING.—The term "blended financing" means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

(5) PARALLEL FINANCING.—The term "parallel financing" means financing provided by any combination of official development assistance, official export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.

SEC. 16. SALE OF BANK LOANS. [added by P.L. 99-509]

(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $1,500,000,000 in fiscal year 1987 from the proceeds of such sales.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the

loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analyisis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials for the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan under this section shall be deemed to be a sale of exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations as may be necessary in the public interest or for the protection of investors.

Subchapter II—Export Financing

[Public Law 90-390]

SEC. 635j. EXPORT FINANCING PROGRAM TO FOSTER FOREIGN TRADE AND COMMERCIAL INTEREST OF THE UNITED STATES.

(a) Congressional statement of policy

It is the policy of the Congress that the Export-Import Bank of the United States should facilitate through loans, guarantees, and insurance (including coinsurance and reinsurance) those export transactions which, in the judgment of the Board of Directors of the Bank, offer sufficient likelihood of repayment to justify the Bank's support in order to actively foster the foreign trade and long-term commercial interest of the United States.

(b) Designation of transactions on books of the Bank; limitation on commitments

The Bank shall specially designate loans, guarantees, and insurance on the books of the Bank made under authority of this subchapter. In connection with guarantees and insurance, not less than 25 per centum of the related contractual liability of the Bank shall be taken into account for the purpose of applying the limitation imposed by section 635e of this title; but the full amount of the related contractual liability of such guarantees and insurance shall be taken into account for the purpose of applying the limitation in section 635(c)(1) of this title, concerning the amount of guarantees and insurance the Bank may have outstanding at any one time thereunder. The aggregate amount of loans plus 25 per centum of the contractual liability of guarantees and insurance outstanding at any one time under this subchapter shall not exceed $500,000,000.

SEC. 635k. APPORTIONMENT OF LOSSES INCURRED ON LOANS, GUARANTEES, AND INSURANCE; REIMBURSEMENT; CONTINGENT OBLIGATIONS.

In the event of any losses, as determined by the Board of Directors of the Bank, incurred on loans, guarantees, and insurance extended under this subchapter, the first $100,000,000 of such losses shall be borne by the Bank; the second $100,000,000 of such losses shall be borne by the Secretary of the Treasury; and any losses in excess thereof shall be borne by the Bank. Reimbursement of the Bank by the Secretary of the Treasury of the amount of losses which are to be borne by the Secretary of the Treasury as aforesaid shall be from funds made available pursuant to section 635*l* of this title. All guarantees and insurance issued by the Bank shall be considered contingent obligations backed by the full faith and credit of the Government of the United States of America.

SEC. 635l. AUTHORIZATION OF APPROPRIATION OF FUND FOR LOSSES.

There are hereby authorized to be appropriated to the Secretary of the Treasury without fiscal year limitation $100,000,000 to cover the amount of any losses which are to be borne by the Secretary of the Treasury as provided in section 635k of this title.

SEC. 635m. LOANS, GUARANTEES, AND INSURANCE SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

Nothing in this subchapter shall be construed as a limitation on the powers of the Bank under subchapter I of this chapter; and except as to the standard of reasonable assurance of repayment required under section 635(b)(1) of this title, all loans, guarantees, and insurance extended hereunder shall be subject to the provisions of subchapter I of this chapter, and to the policies of the Bank with respect to terms of repayment, interest rates, fees, and premiums applicable to loans, guarantees, and insurance extended under subchapter I of this chapter.

SEC. 635n. PROHIBITION OF LOANS, GUARANTEES, AND INSURANCE AS TO SALES OF DEFENSE ARTICLES OR SERVICES.

The Bank shall not extend loans, guarantees, or insurance under this subchapter in connection with the sale of defense articles or defense services.

Subchapter III—Tied Aid Credit Export Subsidies

[Trade and Development Enhancement Act of 1983; P.L. 98-181, Title III, Part C]

SEC. 635o. CONGRESSIONAL STATEMENT OF PURPOSE.

The purpose of this subchapter is—

(1) to expand employment and economic growth in the United States by expanding United States exports to the markets of the developing world;

(2) to stimulate the economic development of countries in the developing world by improving their access to credit for the importation of United States products and services for developmental purposes;

(3) to neutralize the predatory financing engaged in by many nations whose exports compete with United States exports, and thereby restore export competition to a market basis; and

(4) to encourage foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit and govern the use of export credit subsidies generally.

SEC. 635p. PRESIDENTIAL MANDATE TO NEGOTIATE: OBJECTIVES.

The President shall vigorously pursue negotiations to limit and set rules for the use of tied aid for exports. The negotiating objectives of the United States should include reaching agreements—

(1) to define the various forms of tied aid credit, particularly mixed credits under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development (hereinafter in this part referred to as the "Arrangement");

(2) to phase out the use of government-mixed credits by a date certain;

(3) to set rules governing the use of public-private cofinancing, or other forms of mixed financing, which may have the same result as government-mixed credits of drawing on conces-

sional development assistance to produce subsidized export financing;

(4) to raise the threshold for notification of the use of tied aid credit to a 50 per centum level of concessionality;

(5) to improve notification procedures so that advance notification must be given on all uses of tied aid credit; and

(6) to prohibit the use of tied aid credit for production facilities for goods which are in structural oversupply in the world.

SEC. 635q. ESTABLISHMENT OF TIED AND CREDIT PROGRAM IN UNITED STATES EXPORT-IMPORT BANK.

(a) Establishment and elements of program; cooperation with Agency for International Development and private institutions and entities

(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in cooperation with the Agency for International Development and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(B) the combined use of credits, loans, or guarantees offered by the Bank, with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Bank and private institutions or entities.

(b) Purpose of program

The purpose of the tied aid credit program under this section is to offer or arrange for financing for the export of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Fund

The Chairman of the Bank is authorized to establish a fund, as necessary, for carrying out the tied aid credit program described in this section.

(d) Availability of concessional financing or grants

Concessional financing or grants offered by the Agency for International Development for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of subsections (c) and (d) of section 635r of this title.

SEC. 635r. ESTABLISHMENT OF TIED AID CREDIT PROGRAM IN AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) Establishment and elements of program

The Administrator of the Agency for International Development shall establish within the Agency a program of tied aid credits for United States exports. The program shall be carried out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(2) the combination of concessional financing or grants offered by the Agency for International Development with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Agency for International Development and private institutions or entities.

(b) Combinations of funds with financing by Export-Import Bank or private commercial financing

These funds may be combined with financing by the Export-Import Bank of the United States or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Limitation on use of Agency funds; authorization for establishment of fund

(1) Funds of the Agency for International Development which are used to carry out a tied aid credit program authorized by subsections (a) and (b) of this section shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocation of Economic Support Funds.

(2) The Administrator of the Agency for International Development is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

(d) Use of Economic Support Funds

The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.

SEC. 635s. IMPLEMENTATION.

(a)(1) The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 635q and 635r of this title.

(2) No financing may be approved under the tied aid credit programs authorized by section 635q or 635r of this title without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies.

SEC. 635t. DEFINITIONS.

For purposes of this subchapter—

(1) the term "tied aid credit" means credit—

(A) which is provided for development aid purposes;

(B) which is tied to the purchase of exports from the country granting the credit;

(C) which is financed either exclusively from public funds, or, as a mixed credit, partly from public and partly from private funds; and

(D) which has a grant element, as defined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, greater than zero percent;

(2) the term "government-mixed credits" means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term "public-private cofinancing" means the combined use of either official development assistance or official export credit with private commercial credit to finance exports;

(4) the term "blending of financings" means the use of various combinations of official development assistance, official export credit, and private commercial credit, integrated into a single package with a single set of financial terms, to finance exports;

(5) the term "parallel financing" means the related use of various combinations of separate lines of official development assistance, official export credits, and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports; and

(6) the term "Bank" means the Export-Import Bank of the United States.

2. Agriculture Export Sales

Food for Peace Act of 1966

[7 U.S.C. 1707a, P.L. 89-808, as amended by P.L. 95-501, P.L. 97-98, P.L. 98-623 and P.L. 99-198]

[SEC. 2. Amendments of the Agricultural Trade Development and Assistance Act of 1954 as amended (P.L. 480).]

[SEC. 3. Amendments of other agricultural Acts.]

SEC. 4. (a) Commercial export sales of agricultural commodities out of private stocks on credit terms of not to exceed three years may be financed by the Commodity Credit Corporation under its export credit sales program.

(b)(1) Export sales of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the Commodity Credit Corporation. In addition, the corporation may guarantee the repayment of loans made to finance such sales. For the purpose of this paragraph, the term "agricultural commodities" includes wood and processed wood products, as defined in section 1125(d) of the Food Security Act of 1985 (7 U.S.C. 1736t(d)).

(2) No export sale may be financed, and no loans may be guaranteed, under this subsection unless the Secretary of Agriculture determines that the sale will—

(A) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities without displacing normal commercial sales;

(B) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, United States agricultural commodities; or

(C) otherwise promote the export of United States agricultural commodities.

(3) The Secretary is encouraged, to the maximum extent practicable, to finance or guarantee the export sales of agricultural commodities under this subsection to purchasers from—

(A) countries that are previous recipients of credit extended under title I of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1701 et seq.);

(B) countries unable, as determined by the Secretary, to utilize other short-term export credit programs offered by the Secretary or the Commodity Credit Corporation; and

(C) countries that are friendly countries, as defined in section 103(d) of such Act (7 U.S.C. 1703(d)).

(4) Consistent with the provisions of paragraph (2) of this subsection, intermediate credit financing or guarantees under this subsection may be made available for the following uses:

(A) to establish reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

(B) the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

(C) where determined feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities to finance all or part of such facilities);

(D) to meet competition for agricultural export sales;

(E) to finance the importation of agricultural commodities by developing nations for use in meeting their food and fiber needs; and

(F) otherwise to promote the export sales of agricultural commodities.

(5) Intermediate credit financing or guarantees under this subsection may not be used for the purpose of foreign aid or debt rescheduling.

(6)(A) The terms of credit for export sales financed under this subsection shall include the following terms:

(i) Repayment shall be in dollars with interest at a rate determined by the Secretary.

(ii) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

(B) Contracts of guarantee under this subsection shall contain such terms and conditions as the Commodity Credit Corporation shall determine.

(7) The Secretary shall, wherever feasible, obtain commitments from purchasers that will prevent resale or transshipment to other nations of agricultural commodities purchased with financing or guarantees provided under this subsection.

(8) The provisions of the cargo preference laws shall not apply to export sales financed or guaranteed under this subsection.

(9) The authority provided under this subsection shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

(10) For purposes of guaranteeing export sales under this subsection, the Commodity Credit Corporation shall make available—

(A) for each of the fiscal years ending September 30, 1986, through September 30, 1988, not less than $500,000,000; and

(B) for each of the fiscal years ending September 30, 1989 and September 30, 1990, not more than $1,000,000,000.

(c) The term "agricultural commodity" as used in this section includes any agricultural commodity including fish, without regard to whether such fish are harvested in aquacultural operations or product thereof.

(d)(1) There is hereby established in the Treasury a revolving fund to be known as the Agricultural Export Credit Revolving Fund, which shall be available without fiscal year limitation for use by the Commodity Credit Corporation (hereafter referred to in this subsection as the "Corporation" for financing in accordance with this section and section 5(f) of the Commodity Credit Corporation Charter Act the following—

(A) commercial export sales of United States agricultural commodities out of private stocks or stocks owned or controlled by the Corporation on credit terms of not to exceed three years;

(B) export sales of United States breeding animals (including but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations; and

(C) the establishment of facilities in importing countries to improve the capacity of such countries for handling, marketing, processing, storing, or distributing fungible agricultural commodities produced in and exported from the United States (through the use of local currency generated from the sale of United States agricultural commodities).

(2) The Corporation shall use the revolving fund only to extend credit for purposes of market development and expansion and only where there is substantial potential for developing or enhancing regular commercial markets for United States agricultural commodities.

(3) The Secretary of Agriculture shall ensure that the revolving fund is used in such a manner as to involve equitable use of the funds to finance sales to the greatest feasible number of countries consistent with maximizing market opportunities. In carrying out this objective, the Secretary shall establish procedures under which—

(A) not less than 85 per centum of the estimated amount in the revolving fund for any fiscal year shall be made available for the purposes provided in clause (A) of paragraph (1) of this subsection; and

(B) not to exceed 25 per centum of the estimated amount in the revolving fund for any fiscal year shall be made available for the financing of credit sales to any one country for the purposes described in paragraph (1) of this subsection.

(4) There are authorized to be appropriated to the Agricultural Export Credit Revolving Fund such sums as may be necessary to carry out the provisions of this subsection. All funds received by the Corporation in payment for credit extended by the Corporation using the revolving fund, including interest or other receipts on investment and credit obligations, in financing export sales of the types specified in paragraph (1) of this subsection shall be added to and become a part of such revolving fund.

(5) The Secretary shall submit an annual report to Congress not later than December 1 of each year with respect to the use of the revolving fund in carrying out export credit sales by the Corporation in the previous fiscal year. Such report shall include, for the previous fiscal year, the names of the countries extended credit under this subsection, the total amount of such credit extended to each such country, the names of the United States exporters that received any such credit, the total amount of credit provided to each such exporter stated separately for each commodity for which the credit was extended, and a discussion and evaluation of the market development and expansion activities of the Corporation under this subsection during such fiscal year. The first such report shall be submitted to Congress not later than December 1, 1982.

(6) The revolving fund created by this subsection is abolished effective October 1, 1990, and all unobligated money in such fund on September 30, 1990, shall be transferred to and become part of the miscellaneous receipts account of the Treasury.

(7) The authority provided under this subsection shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Corporation under any other provision of law.

(8) The authority provided under this subsection to incur obligations to make loans shall be effective only to the extent that such obligations do not exceed annual limitations on new direct loan obligations which shall be provided in annual appropriations Acts.

Title II of Agriculture Trade Act of 1978

[7 U.S.C. 1707b–d, P.L. 95–501]

COMMODITY CREDIT CORPORATION FINANCING OF DEFERRED PAYMENT SALES; CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 201. (a) To develop new market opportunities for the sale of United States agricultural commodities and to maintain and expand existing foreign markets for such commodities, the Secretary of Agriculture may provide Commodity Credit Corporation financing to exporters of such commodities who wish to provide deferred payment terms to buyers in other nations in order to meet sales competition from other nations or to make additional export sales. Except as otherwise provided in section 202 of this title, financing under this section shall be available only with respect to sales to those nations that are eligible for financing under the short-term export credit sales program conducted by the Commodity Credit Corporation.

(b) Exporters who are willing to sell United States agricultural commodities to foreign buyers on deferred payment terms of not to exceed three years and who must provide such deferred payment terms in order to meet sales competition from other nations, or to make additional export sales, may apply to the Commodity Credit Corporation for financing such sales. Financing under this section shall not be provided by the Corporation until the applicant's export sales plan has been approved by the Corporation and the applicant has established to the satisfaction of the Corporation that exports have been made in accordance with the approved plan.

(c) Repayment to the Commodity Credit Corporation shall be made in dollars by the exporter in accordance with the terms and at interest rates contained in the approved export sales plan. Interest rates on such financing shall be no higher than those charged for financing under the short-term export credit sales program conducted by the Corporation.

(d) The Secretary may, if the Secretary deems such action appropriate to protect the interest of the United States, require a performance guarantee from the exporter at the time of the sale.

(e) Financing agreements with exporters entered into under this section shall be subject to such other terms and conditions as the Secretary may deem necessary or appropriate and shall be subject only to review by the National Advisory Council on International Monetary and Financial Policies.

(f) The authority provided under this section shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

CREDIT SALES TO THE PEOPLE'S REPUBLIC OF CHINA

SEC. 202. Notwithstanding any other provision of law, in order to expand and develop markets for United States agricultural commodities, the Commodity Credit Corporation may provide financing for commercial sales of agricultural commodities out of private stocks on terms of not to exceed three years to the People's Republic of China under (1) the short-term export credit sales program conducted by the Corporation, and (2) the deferred payment sales program for exporters established under section 201 of this title.

DEFINITION

Sec. 203. The term "agricultural commodity" as used in this title includes any agricultural commodity or product thereof.

Section 1203 of Agriculture and Food Act of 1981

[7 U.S.C. 1736i, P.L. 97-98]

SPECIAL STANDBY EXPORT SUBSIDY PROGRAM

Sec. 1203. (a) In order to discourage foreign countries or instumentalities thereof from using subsidies to promote the exportation of agricultural commodities, the Secretary of Agriculture shall formulate a special standby export subsidy program for agricultural commodities or products thereof produced in the United States. Such program shall be designed to neutralize the effects of export subsidy programs instituted by foreign countries or instrumentalities to encourage exports of their agricultural commodities to foreign markets other than the United States.

(b) The Secretary may implement the special standby export subsidy program formulated under subsection (a) of this section only after the President—

(1) makes a determination under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) that action by the United States is appropriate to obtain the elimination of an act, policy or practice of a foreign country or instrumentality that results in—

(A) substantial displacement of United States exports of agricultural commodities to foreign markets, or

(B) prices for agricultural commodities in foreign markets materially below prices which suppliers of the same agricultural commodities produced in the United States must charge in order to supply such commodities to the same markets;

(2) makes a determination that such act, policy, or practice of the foreign country or instrumentality concerned involves the use of export subsidies to encourage exports of such country's or instrumentality's agricultural commodities to foreign markets other than the United States; and

(3) fails to reach a mutually acceptable resolution through consultation with the foreign country or instrumentality concerned.

(c) The Secretary shall use the Commodity Credit Corporation in carrying out the special standby export subsidy program authorized by this section.

(d) Notwithstanding any other provision of this section, the Secretary shall not implement the special standby export subsidy program for cotton.

(e) The authority provided under this section shall be in addition to, and not in lieu of, any authority granted to the Secretary or the Commodity Credit Corporation by any other provision of law.

Food Security Act of 1985 [Excerpts]

[P.L. 99-198, as amended by P.L. 99-260 and P.L. 100-418]

AGRICULTURAL TRADE CONSULTATIONS

SEC. 1123. (a) To improve the orderly marketing of United States agricultural commodities, to achieve higher income for United States producers of agricultural commodities, and to reduce the likelihood of an agricultural commodity price war and the need for export subsidy programs, the Secretary of Agriculture shall, in coordination with the United States Trade Representative, confer with representatives of other major agricultural producing countries and, at the earliest possible date, initiate and pursue agricultural trade consultations among major agricultural producing countries.

(b) It is the sense of Congress that the objectives of the consultations called for in subsection (a) should be to—

(1) increase the exchange of information on worldwide agricultural production, demand, and commodity supply levels;

(2) determine a more equitable sharing of responsibility for maintaining agricultural commodity reserves and managing supplies of agricultural commodities; and

(3) attain increased cooperation in restraining export subsidy programs.

(c) The Secretary of Agriculture shall report to Congress by July 1, 1986, and annually thereafter through fiscal year 1990, on the progress of efforts to initiate and pursue the consultations called for in subsection (a), including any agreements reached with respect to the objectives set forth in subsection (b).

TARGETED EXPORT ASSISTANCE

SEC. 1124. (a) For export activities authorized to be carried out by the Secretary of Agriculture or the Commodity Credit Corporation, in addition to any funds or commodities otherwise required under this Act to be used for such activities—

(1) for each of the fiscal years ending September 30, 1986, through September 30, 1987, the Secretary shall use under this section not less than $110,000,000 of funds of, or commodities owned by, the Corporation;

(2) for the fiscal year 1988, the Secretary shall use under this section not less than $215,000,000 of the funds of, or commodities owned by, the Corporation, except that the Secretary shall use funds or commodities of the Corporation in excess of $110,000,000 only to the extent appropriations to reimburse the Corporation for such additional expenditures of funds or distribution of commodities are made available in advance to carry out this section; and

(3) for each of the fiscal years 1989 and 1990, the Secretary shall use under this section not less than $325,000,000 of the funds of, or commodities owned by, the Corporation.

(b)(1) Except as provided in paragraph (3), funds or commodities made available for use under this section shall be used by the Secretary only to counter or offset the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (2)), import quotas, or other unfair trade practices of a foreign country.

(2) As used in paragraph (1) the term subsidy includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(3)(A) Funds or commodities made available for use under this section may be used by the Secretary to assist organizations consisting of producers or processors of United States agricultural commodities in amounts necessary to compensate the organizations for reasonable expenses incurred in defending countervailing duty actions instituted after January 1, 1986, in foreign countries to offset the benefits of the agricultural programs provided for under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.). In no event may such assistance exceed $500,000 for the defense of any one countervailing duty action.

(B) If the Secretary declines to make funds or commodities available under this paragraph, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the reasons for declining to make the funds or commodities available.

(c) The Secretary shall provide export assistance under this section on a priority basis in the case of—

(1) agricultural commodities and the products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 (19 U.S.C. 2411); or

(2) agricultural commodities and the products thereof for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974 of (19 U.S.C. 2411).

SHORT-TERM EXPORT CREDIT

Sec. 1125. (a) In making available any guarantees of the repayment of credit extended on terms of up to 3 years in connection with the export sale of United States agricultural commodities or the products thereof, the Commodity Credit Corporation shall take into account—

(1) the credit needs of countries that are potential purchasers of United States agricultural exports;

(2) the creditworthiness of such countries; and

(3) whether the availability of Commodity Credit Corporation guarantees will improve the competitive position of United States agricultural exports in world markets.

(b) Effective for the fiscal year ending September 30, 1986 and each fiscal year thereafter through the fiscal year ending September 30, 1990, the Commodity Credit Corporation shall make available not less than $5,000,000,000 in credit guarantees under its export credit guarantee program for short-term credit extended to finance the export sales of United States agricultural commodities and the products thereof, including wood and processed wood products.

(c) Notwithstanding any other provision of law, the Secretary of Agriculture may not charge an origination fee with respect to any credit guarantee transaction under the Export Credit Guarantee Program (GSM–102) in excess of an amount equal to one percent of the credit extended under the transaction.

(d) For the purpose of this section, the term "wood and processed wood products" includes but is not limited to logs, lumber (boards, timber, millwork, molding, flooring, and siding), veneer, panel products (plywood, particle board, and fiberboard), utility and telephone poles, other poles and posts, railroad ties, wood pulp, and wood chips.

DEVELOPMENT AND EXPANSION OF MARKETS FOR UNITED STATES AGRICULTURAL COMMODITIES

SEC. 1127. (a)(1) Notwithstanding any other provision of law, the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") shall formulate and carry out a program under which agricultural commodities and the products thereof acquired by the Commodity Credit Corporation are provided to United States exporters, users, and processors and foreign purchasers at no cost to encourage the development, maintenance, and expansion of export markets for United States agricultural commodities and the products thereof, including value-added or high-value agricultural products produced in the United States.

(2)(A) The term "agricultural commodities", as used in this section in referring to United States agricultural commodities, includes, but is not limited to—

(i) wheat, feed grains, upland cotton, rice, soybeans, and dairy products produced in the United States;

(ii) any other agricultural commodity produced in the United States that is determined by the Secretary of Agriculture to be in surplus supply and that can be purchased with funds available under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935; and

(iii) products of the commodities and products described in clauses (i) and (ii) that are processed in the United States.

(B) United States agricultural commodities, as described in clause (ii) of subparagraph (A), may not be purchased with funds available under section 32 of the Act entitled "An Act to amend the Agricultural Adjustment Act, and for other purposes", approved August 24, 1935, for the sole purpose of use under the program under this section; and such commodities, or products thereof, may not be furnished to a United States user, exporter, processor, or foreign purchaser under the program under this section except by mutual agreement of such user, exporter, processor, or purchaser and the Secretary.

(3) In carrying out paragraph (1), the Secretary may provide such commodities in order to make United States commodities more competitive and shall, to the extent necessary, provide such commodities and products—

(A) to counter or offset—

(i) the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (4) or other unfair trade practice of a foreign country that directly or indirectly benefits producers, processors, or exporters of agricultural commodities in such foreign country;

(ii) the adverse effects of United States agricultural price support levels that are temporarily above the export prices offered by overseas competitors in export markets; or

(iii) fluctuations in the exchange rate of the United States dollar against other major currencies; and

(B) in conjunction with an intermediate export credit program conducted by the Commodity Credit Corporation—

(i) for the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations; and

(ii) for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities or the products thereof to finance all or part of such facilities).

(4) As used in paragraph (3)(A)(i), the term "subsidy" includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(b) In carrying out the program established by this section, the Secretary of Agriculture—

(1) shall take such action as may be necessary to ensure that the program provides equal treatment to domestic and foreign purchasers and users of United States agricultural commodities and the products thereof in any case in which the importation of a manufactured product made in whole or in part, from a commodity or the product thereof made available for export under this section would place domestic users of the commodity or the product thereof at a competitive disadvantage;

(2) may consider for participation all interested United States exporters, processors, and users and interested foreign purchasers, and may give priority to sales to countries that have traditionally purchased United States agricultural commodities and products;

(3) shall encourage increased use and avoid displacing usual marketings of United States agricultural commodities and the products thereof;

(4) shall take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, or agricultural commodities

or the products thereof the export of which is assisted under this section; and

(5) may provide to a United States exporter, user, processor, or foreign purchaser, under the program, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided.

(c)(1) If a country does not meet the financial qualifications for export credit or credit guarantees provided by the Commodity Credit Corporation, the Secretary may provide to such country agricultural commodities and the products thereof acquired by the Corporation to the extent necessary to reduce the cost to such country of purchasing United States agricultural commodities and to allow such country to meet such qualifications.

(2) The Secretary shall review and adjust annually the quantity of commodities provided to a country under paragraph (1) in order to encourage such country to place greater reliance on increased use of commercial trade to meet the qualifications referred to in paragraph (1).

(d)(1) in carrying out this section, the Secretary may make green dollar export certificates available to commercial exporters of United States agricultural commodities and the products thereof.

(2) The Secretary shall make such certificates available under such terms and conditions as the Secretary determines appropriate.

(3) The amount of such certificates to be made available to an exporter may be determined—

(A) on the basis of competitive bids submitted by exporters; or

(B) by announcement of the Secretary.

(4)(A) An exporter may redeem a green dollar export certificate for commodities owned by the Commodity Credit Corporation.

(B) For purposes of redeeming such certificates, the Secretary may establish values for such commodities that are different than the acquisition prices of such commodities.

(5) Such certificates—

(A) may be transferred among commercial exporters of United States agricultural commodities; and

(B) shall be redeemed within 6 months after the date of issuance.

(e) The Secretary of Agriculture shall carry out the program established by this section through the Commodity Credit Corporation.

(f) Any price restrictions that otherwise may be applicable to dispositions of agricultural commodities owned by the Commodity Credit Corporation shall not apply to agricultural commodities provided under this section.

(g) The program established under this section shall be in addition to, and not in place of, any authority granted to the Secretary of Agriculture or Commodity Credit Corporation under any other provision of law.

(h) The authority provided under this section shall terminate on September 30, 1990.

(i) During the period beginning October 1, 1985, and ending September 30, 1990, the Secretary shall use agricultural commodities and the products thereof referred to in subsection (a) to carry out this section, except that the value of the commodities and products may not be less than $1,000,000,000, nor more than $2,500,000,000. To the maximum extent practicable, such commodities shall be used in equal amounts during each of the years in such period.

POULTRY, BEEF AND PORK MEATS AND MEAT-FOOD PRODUCTS, EQUITABLE TREATMENT

SEC. 1128. In the case of any program operated by the Secretary of Agriculture during the years 1986 through 1989, for the purpose of encouraging or enhancing commercial sales in foreign export markets of agricultural products or commodities produced in the United States, which program includes the payment of bonus or incentive (in cash, commodities, or other benefits) provided to the purchaser, the Secretary shall seek to expend annually at least 15 per centum of the total funds available (or 15 per centum of the value of any commodities employed to encourage such sales) for program activities to likewise encourage and enhance the export sales of poultry, beef or pork meat and meat products.

AGRICULTURAL ATTACHÉ REPORTS

SEC. 1132. (a) The Secretary of Agriculture shall require appropriate officers and employees of the Department of Agriculture, including those stationed in foreign countries, to prepare and submit annually to the Secretary detailed reports that—

(1) document the nature and extent of—

(A) programs in such countries that provide direct or indirect government support for the export of agricultural commodities and the products thereof, and

(B) other trade practices that may impede the entry of United States agricultural commodities and the products thereof into such countries; and

(2) identify opportunities for the export of United States agricultural commodities and the products thereof to such countries.

(b) The Secretary shall—

(1) annually compile the information contained in such reports;

(2) in consultation with the agricultural technical advisory committees established under section 135(c) of the Trade Act of 1974 (19 U.S.C. 2155(c)), include in the compilation a priority ranking of those trade barriers identified in subsection (a) by commodity group;

(3) include in the compilation a list of actions undertaken to reduce or eliminate such trade barriers; and

(4) make the compilation available to Congress, the trade assistance office created under section 4602 of the Agricultural Competitiveness and Trade Act of 1988, the agricultural policy advisory committee, and other interested parties.

(c) The United States Trade Representative shall—

(1) review the reports prepared under subsection (a) and any other information available to identify export subsidies or other export enhancing techniques (within the meaning of the

agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade);

(2) identify markets (in order of priority) in which United States export subsidies can be used most efficiently and will have the greatest impact in offsetting the benefits of foreign export subsidies that—

(A) harm United States exports,

(B) are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade,

(C) nullify or impair benefits accruing to the United States under international agreements, or

(D) cause serious prejudice to the interests of the United States and

(3) submit to the Congress and to the Secretary of Agriculture an annual report on—

(A) the existence and status of export subsidies and other export enhancing techniques that are the subject of the investigation conducted under paragraph (1), and

(B) the identification and assignment of priority to markets under paragraph (2).

(d) The Secretary and the United States Trade Representative shall convene a meeting, at least once a year, of the Agricultural Policy Advisory Committee and the agricultural technical advisory committees to develop specific recommendations for actions to be taken by the Federal Government and private industry to—

(1) reduce or eliminate trade barriers or distortions identified in the annual reports required to be submitted under subsections (a) and (c); and

(2) expand United States agricultural export opportunities identified in such annual reports.

G. MULTILATERAL EXPORT CONTROL ENHANCEMENT

[50 U.S.C. App. 2401, P.L. 100–418.]

SEC. 2442. FINDINGS.

The Congress makes the following findings:

(1) The diversion of advanced milling machinery to the Soviet Union by the Toshiba Machine Company and Kongsberg Trading Company has had a serious impact on United States and Western security interests.

(2) United States and Western security is undermined without the cooperation of the governments and nationals of all countries participating in the group known as the Coordinating Committee (hereafter in this part referred to as "COCOM") in enforcing the COCOM agreement.

(3) It is the responsibility of all governments participating in COCOM to place in effect strong national security export control laws, to license strategic exports carefully, and to enforce those export control laws strictly, since the COCOM system is only as strong as the national laws and enforcement on which it is based.

(4) It is also important for corporations to implement effective internal control systems to ensure compliance with export control laws.

(5) In order to protect United States national security, the United States must take steps to ensure the compliance of foreign companies with COCOM controls, including, where necessary conditions have been met, the imposition of sanctions against violators of controls commensurate with the severity of the violation.

SEC. 2443. MANDATORY SANCTIONS AGAINST TOSHIBA AND KONGSBERG.

(a) SANCTIONS AGAINST TOSHIBA MACHINE COMPANY, KONGSBERG TRADING COMPANY, AND CERTAIN OTHER FOREIGN PERSONS.—(1) The President shall impose, for a period of 3 years—

(1) a prohibition on contracting with, and procurement of products and services from—

(A) Toshiba Machine Company and Kongsberg Trading Company, and

(B) any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery by Toshiba Machine Company and Kongsberg Trading Company to the Soviet Union, by any department, agency, or instrumentality of the United States Government; and

(2) a prohibition on the importation into the United States of all products produced by Toshiba Machine Company, Kongsberg Trading Company, and any foreign person described in paragraph (1)(B).

(b) SANCTIONS AGAINST TOSHIBA CORPORATION AND KONGSBERG VAAPENFABRIKK.—The President shall impose, for a period of 3 years, a prohibition on contracting with, and procurement of products and services from, the Toshiba Corporation and Kongsberg Vaapenfabrikk, by any department, agency, or instrumentality of the United States Government.

(c) EXCEPTIONS.—The President shall not apply sanctions under this section—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(B) if the President determines that the company or foreign person to whom the sanctions would otherwise be applied is a sole source supplier of essential defense articles or services and no alternative supplier can be identified; or

(C) if the President determines that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to—

(A) products or services provided under contracts or other binding agreements (as such terms are defined by the President in regulations) entered into before June 30, 1987;

(B) spare parts;

(C) component parts, but not finished products, essential to United States products or production;

(D) routine servicing and maintenance of products; or

(E) information and technology.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in production of a finished product, would be substantially transformed in that process;

(2) the term "finished product" means any article which is usable for its intended functions without being imbedded in or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than a sanctioned person that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product; and

(3) the term "sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed under subsection (a) or (b).

[SEC. 2444. Mandatory Sanctions for Future Violations. See section 11A of Export Administration Act of 1979, as amended.]

H. FAIR TRADE IN AUTO PARTS

[15 U.S.C. 4701; P.L. 100–418.]

SEC. 2121. SHORT TITLE.

This part may be referred to as the "Fair Trade in Auto Parts Act of 1988".

For purposes of this part, the term "Japanese markets" refers to markets, including those in the United States and Japan, where automotive parts and accessories, both original equipment and aftermarket, are purchased for use in the manufacture or repair of Japanese automobiles.

SEC. 2123. ESTABLISHMENT OF INITIATIVE ON AUTO PARTS SALES TO JAPAN.

(a) IN GENERAL.—The Secretary of Commerce shall establish an initiative to increase the sale of United States-made auto parts and accessories to Japan markets.

(b) FUNCTIONS.—In carrying out this section, the Secretary shall—

(1) foster increased access for United States-made auto parts and accessories to Japanese companies, including specific consultations on access to Japanese markets;

(2) facilitate the exchange of information between United States auto parts manufacturers and the Japanese automobile industry;

(3) collect data and market information on the Japanese automobile industry regarding needs, trends, and procurement practices, including the types, volume, and frequency of parts sales to Japanese automobile manufacturers;

(4) establish contacts with Japanese automobile manufacturers in order to faciliate contact between United States auto parts manufacturers and Japanese automobile manufacturers;

(5) report on and attempt to resolve disputes, policies, or practices, whether public or private, that result in barriers to increased commerce between United States auto parts manufacturers and Japanese automobile manufacturers;

(6) take actions to initiate periodic consultations with officials of the Government of Japan regarding sales of United States-made auto parts in Japanese markets; and

(7) submit annual written reports or otherwise report annually to the Congress on the sale of United States-made auto parts in Japanese markets, including the extent to which long-term, commercial relationships exist between United States auto parts manufacturers and Japanese automobile manufacturers.

SEC. 2124. ESTABLISHMENT OF SPECIAL ADVISORY COMMITTEE ON AUTO PARTS SALES IN JAPAN.

(a) In General.—The Secretary of Commerce shall seek the advice of the United States automotive parts industry in carrying out this part.

(b) Establishment of Committee.—The Secretary of Commerce shall establish a Special Advisory Committee for purposes of carrying out this part.

(c) Functions.—The Special Advisory Committee established under subsection (b) shall—

(1) report to the Secretary of Commerce on barriers to sales of United States-made auto parts and accessories in Japanese markets;

(2) review and consider data collected on sales of United States-made auto parts and accessories in Japanese markets;

(3) advise the Secretary of Commerce during consultations with the Government of Japan on issues concerning sales of United States-made auto parts in Japanese markets;

(4) assist in establishing priorities for the initiative established under section 2123, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that action; and

(5) assist the Secretary in reporting, or otherwise report to the Congress as requested on the progress of sales of United States-made auto parts in Japanese markets;

(d) Authority.—The Secretary of Commerce shall draw on existing budget authority in carrying out this part.

SEC. 2125. EXPIRATION DATE.

The authorities under this part shall expire on December 31, 1993.

Chapter 12: AUTHORITIES RELATING TO POLITICAL OR ECONOMIC SECURITY

A. International Emergency Economic Powers Act

[50 U.S.C. 1701, P.L. 95-223, title II, as amended by P.L. 100-418]

SHORT TITLE

SEC. 201. This title may be cited as the "International Emergency Economic Powers Act".

SITUATIONS IN WHICH AUTHORITIES MAY BE EXERCISED

SEC. 202. (a) Any authority granted to the President by section 203 may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 203 may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

GRANT OF AUTHORITIES

SEC. 203 (a)(1) At the times and to the extent specified in section 202, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this title shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this title, or any regulation, instruction, or direction issued under this title.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 202 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exporation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.

CONSULTATION AND REPORTS

SEC. 204. (a) The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this title and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Whenever the President exercises any of the authorities granted by this title, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be be taken with respect to those countries.

(c) At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this title, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act.

AUTHORITY TO ISSUE REGULATIONS

SEC. 205. The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this title.

PENALTIES

SEC. 206. (a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SAVINGS PROVISION

SEC. 207. (a)(1) Except as provided in subsection (b), notwithstanding the termination pursuant to the National Emergencies Act of a national emergency declared for purposes of this title, any authorities granted by this title, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) The authorities described in subsection (a)(1) may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c)(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) and of paragraphs (A), (B), and (C) of section 202(a) of the National Emergencies Act.

(2) The provisions of this section superseded the termination provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

Sec. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

B. Trading With the Enemy Act of 1917

Section 5(b), as amended

[50 U.S.C App. 5(b), P.L. 65-91, as amended by P.L. 65-217, P.L. 73-1, Public Resolution 76-69, P.L. 77-354, P.L. 95-223, and P.L. 100-418]

Sec. 5. (b)(1) During the time of war the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subsection, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(4) The authority granted to the President in this subsection does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 5 of the Export Administration

Act of 1979 or with respect to which no acts are prohibited by chapter 37 of title 18, United States Code.

[Section 2502(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 provides with respect to paragraph (4) of section 5(b):

[The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act, do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited.]

Section 101(b) of Public Law 95-223

[50 U.S.C. App. 5(b) note]

REMOVAL OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

SEC. 101. (b) Notwithstanding the amendment made by subsection (a), the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act. The President may extend the exercise of such authorities for one-year periods upon a determination of each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

C. Denial of Trade Benefits to Uncooperative Major Drug Producing or Drug-Transit Countries

Title VIII of Trade Act of 1974, as amended

[19 U.S.C. 2491; P.L. 99-570, as amended by P.L. 100-204 and P.L. 100-690]

TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

SEC. 801. SHORT TITLE.

This title may be cited as the "Narcotics Control Trade Act".

SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.

(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March

1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b)(1)(A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B),

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States,

(III) in preventing and punishing the laundering in that country of drug-related profits or drug-related moneys, and

(IV) in preventing and punishing bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug treatment;

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagaph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

(2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961? In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has that government, as a matter of government policy, encouraged or facilitated the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has that government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has that government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has that government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has that government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, with 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (a), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) DURATION OF ACTION—The action taken by the President under paragraph (1), (2), or (3) of subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) PRESIDENTIAL ACTION REGARDING AVIATION.—

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (a), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the term "air transportation", "air carrier", "foreign air carrier" and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(e) For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 805(3) (A) and (B).

SEC. 803. SUGAR QUOTA.

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

SEC. 804. PROGRESS REPORTS.

The President shall include as a part of the annual report required under section 481(e) (1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

SEC. 805. DEFINITIONS.

For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term "major drug producing country" means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and

(3) the term "major drug-transit country" means a country—

(A that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

D. Economic Sanctions Against Terrorism

Sections 504 and 505 of International Security and Development Cooperation Act of 1985

[22 U.S.C. 2349 aa-8, aa-9, P.L. 99-83]

SEC. 504. PROHIBITION ON IMPORTS FROM AND EXPORTS TO LIBYA.

(a) Prohibition on Imports.—Notwithstanding any other provision of law, the President may prohibit any article grown, produced, extracted, or manufactured in Libya from being imported into the United States.

(b) Prohibition on Exports.—Notwithstanding any other provision of law, the President may prohibit any goods or technology, including technical data or other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, from being exported to Libya.

(c) Definition.—For purposes of this section, the term "United States", when used in a geographical sense, includes territories and possessions of the United States.

SEC. 505. BAN ON IMPORTING GOODS AND SERVICES FROM COUNTRIES SUPPORTING TERRORISM.

(a) Authority.—The President may ban the importation into the United States of any good or service from any country which supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations.

(b) Consultation.—The President, in every possible instance, shall consult with the Congress before exercising the authority granted by this section and shall consult regularly with the Congress so long as that authority is being exercised.

(c) Reports.—Whenever the President exercises the authority granted by this section, he shall immediately transmit to the Congress a report specifying—

(1) the country with respect to which the authority is to be exercised and the imports to be prohibited;

(2) the circumstances which necessitate the exercise of such authority;

(3) why the President believes those circumstances justify the exercise of such authority; and

(4) why the President believes the prohibitions are necessary to deal with those circumstances.

At least once during each succeeding 6-month period after transmitting a report pursuant to this subsection, the President shall report to the Congress with respect to the actions taken, since the last such report, pursuant to this section and with respect to any changes which have occurred concerning any information previously furnished pursuant to this subsection.

(d) Definition.—For purposes of this section, the term "United States" includes territories and possessions of the United States.

E. Embargo on Trade With Cuba

Section 620(a) of Foreign Assistance Act of 1961, as amended

[22 U.S.C. 2370, P.L. 87–195, as amended by Foreign Assistance Acts of 1963, 1965, and P.L. 95–88]

Sec. 620. Prohibitions Against Furnishing Assistance.—(a)(1) No assistance shall be furnished under this Act to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this Act of any government of Cuba, nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities not less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

F. Economic Sanctions Against South Africa

Comprehensive Anti-Apartheid Act of 1986, as amended [Excerpts]

[22 U.S.C. 5001, P.L. 99–440, as amended by P.L. 99–631 and P.L. 100–418]

SHORT TITLE

Section 1. This Act may be cited as the "Comprehensive Anti-Apartheid Act of 1986".

[SEC. 2. TABLE OF CONTENTS]

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "Code of Conduct" refers to the principles set forth in section 208(a);

(2) the term "controlled South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or

(B) a branch, office, agency or sole proprietorship in South Africa of a national of the United States;

(3) the term "loan"—

(A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including—

(i) overdrafts,

(ii) currency swaps,

(iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,

(iv) the purchase of a loan made by another person,

(v) the sale of financial assets subject to an agreement to repurchase, and

(vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and

(B) does not include—

(i) normal short-term trade, financing, as by letters of credit or similar trade credits;

(ii) sales on open account in cases where such sales are normal business practice; or

(iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African entity or the Government of South Africa;

(4) the term "new investment"—

(A) means—

(i) a commitment or contribution of funds or other assets, and

(ii) a loan or other extension of credit, and

(B) does not include—

(i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the reinvestment of such profits in a South African entity;

(ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or

(iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act, or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa;

(5) the term "national of the United States" means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); or

(B) a corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia;

(6) the term "South Africa" includes—

(A) the Republic of South Africa;

(B) any territory under the administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands," to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana Ciskei, and Venda; and

(7) the term "South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa; or

(B) a branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa;

(8) the term "South African national" means—

(A) a citizen of South Africa; and

(B) any partnership, corporation, or other business association which is organized under the laws of South Africa; and

(9) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

PURPOSE

SEC. 4. The purpose of this Act is to set forth a comprehensive and complete framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa and lead to the establishment of a nonracial, democratic form of government. This Act sets out United States policy toward the Government of South Africa, the victims of apartheid, and the other states in southern Africa. It also provides the President with additional authority to work with the other industrial democracies to help end apartheid and establish democracy in South Africa.

[TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID]

[TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID]

TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

PROHIBITION ON THE IMPORTATION OF KRUGERRANDS

SEC. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

PROHIBITION ON THE IMPORTATION OF MILITARY ARTICLES

SEC. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.

PROHIBITION ON THE IMPORTATION OF PRODUCTS FROM PARASTATAL ORGANIZATIONS

SEC. 303. (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12-month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before August 15, 1986: *Provided*, That no shipments may be received by a national of the United States under such contract after April 1, 1987.

(b) For purposes of this section, the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material.

PROHIBITION ON COMPUTER EXPORTS TO SOUTH AFRICA

SEC. 304. (a) No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:

(1) The military.

(2) The police.

(3) The prison system.

(4) The national security agencies.

(5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research.

(6) The administering authorities for controlling the movements of the victims of apartheid.

(7) Any apartheid enforcing agency.

(8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

(b)(1) Computers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).

(2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.

PROHIBITION ON LOANS TO THE GOVERNMENT OF SOUTH AFRICA

SEC. 305. (a) No national of the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.

(b) The prohibition contained in subsection (a) shall not apply to—

(1) a loan or extension of credit for any education, housing, or humanitarian benefit which—

(A) is available to all persons on a nondiscriminatory basis; or

(B) is available in a geographic area accessible to all population groups without any legal or administrative restriction; or

(2) a loan or extension of credit for which an agreement is entered into before the date of enactment of this Act.

PROHIBITION ON AIR TRANSPORTATION WITH SOUTH AFRICA

SEC. 306. (a)(1) The President shall immediately notify the Government of South Africa of his intention to suspend the rights of any air carrier designated by the Government of South Africa under the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, to service the routes provided in the Agreement.

(2) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.

(3) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation not to permit or otherwise designate any United States air carrier to provide service between the United States and South Africa pursuant to the Agreement.

(b)(1) The Secretary of State shall terminate the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, in accordance with the provisions of that agreement.

(2) Upon termination of such agreement, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of South Africa or by South African nationals from engaging in air transportation with respect to the United States.

(3) The Secretary of Transportation shall prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.

(c) The Secretary of Transportation may provide for such exceptions from the prohibition contained in subsection (a) or (b) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(d) For purposes of this section, the terms "aircraft", "air carrier", "air transportation," and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

PROHIBITIONS ON NUCLEAR TRADE WITH SOUTH AFRICA

SEC. 307. (a) Notwithstanding any other provision of law—

(1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109b of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;

(2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the President to be likely to be diverted to, a South African production or utilization facility;

(3) the Secretary of Energy shall not, under section 57b(2) of the Atomic Energy Act, authorize any person to engage, direcly or indirectly, in the production of special nuclear material in South Africa; and

(4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regu-

latory Commission or an executive branch agency for retransfer to South Africa

unless the Secretary of State determines and certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.

(b) Nothing in this section shall preclude—

(1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or

(2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferation risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS

SEC. 308. (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

PROHIBITION ON IMPORTATION OF URANIUM, COAL, AND TEXTILES FROM SOUTH AFRICA

SEC. 309. (a) Notwithstanding any other provision of law, no—

(1) uranium ore,

(2) uranium oxide,

(3) coal, or

(4) textiles,

that are produced or manufactured in South Africa may be imported into the United States.

(b) For purposes of this section, the term "textiles" does not include any article provided for in subheading 9804.00.20 or 9804.00.45 of the Harmonized Tariff Schedule of the United States.

(c) This section shall take effect 90 days after the date of enactment of this Act.

PROHIBITION ON NEW INVESTMENT IN SOUTH AFRICA

SEC. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

TERMINATION OF CERTAIN PROVISIONS

SEC. 311. (a) This title and sections 501(c) and 504(b) shall terminate if the Government of South Africa—

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

(b) The President may suspend or modify any of the measures required by this title or section 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has—

(1) taken the action described in paragraph (1) of subsection (a),

(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and

(3) made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy,

unless the Congress enacts within such 30-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.

(c) It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African Congress or other organizations—

(1) refuse to abandon unprovoked violence during such negotiations; and

(2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law,

then the United States will support negotiations which do not include these organizations.

[SEC. 312. POLICY TOWARD VIOLENCE OR TERRORISM]

TERMINATION OF TAX TREATY AND PROTOCOL

SEC. 313. The Secretary of State shall terminate immediately, in accordance with its terms, the Convention Between the Government of the United States of America and the Government of the Union of South Africa for the Avoidance of Double Taxation and for Establishing Rules of Reciprocal Administrative Assistance With Respect to Taxes on Income, done at Pretoria on December 13, 1946, and the protocol relating thereto.

PROHIBITION ON UNITED STATES GOVERNMENT PROCUREMENT FROM SOUTH AFRICA

SEC. 314. On or after the date of enactment of this Act, no department, agency, or any other entity of the United States Government may enter into a contract for the procurement of goods or services from parastatal organizations except for items necessary for diplomatic or consular purposes.

PROHIBITION ON THE PROMOTION OF UNITED STATES TOURISM IN SOUTH AFRICA

SEC. 315. None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in South Africa.

PROHIBITION ON UNITED STATES GOVERNMENT ASSISTANCE TO, INVESTMENT IN, OR SUBSIDY FOR TRADE WITH, SOUTH AFRICA

SEC. 316. None of the funds appropriated or otherwise made available by any provision of law may be available for any assistance to investment in, or any subsidy for trade with, South Africa, including but not limited to funding for trade missions in South Africa and for participation in exhibitions and trade fairs in South Africa.

PROHIBITION ON EXPORT OF ITEMS ON THE UNITED STATES MUNITIONS LIST

SEC. 317. (a) Except as provided in subsection (b), no item contained on the United States Munitions List which is subject to the jurisdiction of the United States may be exported to South Africa.

(b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b).

NOTIFICATION OF CERTAIN PROPOSED UNITED STATES MUNITIONS LIST EXPORTS

SEC. 318. (a) Notwithstanding any other provision of this Act, the President shall—

(1) notify the Congress of his intent to allow the export to South Africa of any item which is on the United States Muntions List and which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and

(2) certify that such item shall be used solely for commerical purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(b)(1) No item described in subsection (a) may be exported if the Congress, within 30 days of continuous session after a certification is made under subsection (a)(2), enacts, in accordance with section 602 of this Act, a joint resolution disapproving such export.

(2) For purposes of paragraph (1), the term "continuous session" is used within the meaning of section 906(b) of title 5, United States Code.

PROHIBITION ON IMPORTATION OF SOUTH AFRICAN AGRICULTURAL PRODUCTS AND FOOD

SEC. 319. Notwithstanding any other provision of law, no—

(1) agricultural commodity or product or any byproduct or derivative thereof, or

(2) article that is suitable for human consumption,

that is a product of South Africa may be imported into the United States after the date of enactment of this Act.

PROHIBITION ON IMPORTATION OF IRON AND STEEL

SEC. 320. Notwithstanding any other provision of law, no iron or steel produced, or iron ore extracted, in South Africa may be imported into the United States, except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986.

PROHIBITION OF EXPORTS OF CRUDE OIL AND PETROLEUM PRODUCTS

SEC. 321. (a) No crude oil or refined petroleum product which is subject to the jurisdiction of the United States may be exported to South Africa, and no crude oil or refined petroleum product may be exported to South Africa by a person subject to the jurisdiction of the United States.

(b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act, if no shipment of such export is made under contract after December 31, 1986.

[SEC. 322. PROHIBITION ON COOPERATION WITH THE ARMED FORCES OF SOUTH AFRICA]

PROHIBITION ON SUGAR IMPORTS

SEC. 323. (a)(1) Notwithstanding any other provision of law, no sugars, sirups, or molasses that are products of the Republic of South Africa may be imported into the United States after the date of enactment of this Act.

(2) The aggregate quantity of sugars, sirups, and molasses that—

(A) are products of the Philippines, and

(B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, sirups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,

shall be increased by the aggregate quantity of sugars, sirups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.

[(b) Amendments to headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States. See Sugar Quotas under Headnote Authorities.]

TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

NEGOTIATING AUTHORITY

SEC. 401. (a) It is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such cooperative agreements should be measurably greater than the net economic effect of the measures imposed by this Act.

(b)(1) Negotiations to reach international cooperative agreements with the other industrialized democracies on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

(2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—

(A) a description of United States efforts to negotiate multilateral measures to bring about the complete dismantling of apartheid; and

(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.

(c) If the President successfully concludes an international agreement described in subsection (b)(1), he may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of title III to conform with such agreement.

(d) Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 30 days before the day on which he enters into such agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits to the House of Representatives and to the Senate a document containing a copy of the final legal text of such agreement, together with—

(A) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States foreign policy and as to why the proposed administrative action is required or appropriate to carry out the agreement; and

(3) a joint resolution approving such agreement has been enacted, in accordance with section 602 of this Act, within 30 days of transmittal of such document to the Congress.

(e) It is the sense of the Congress that the President should instruct the Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

LIMITATION ON IMPORTS FROM OTHER COUNTRIES

SEC. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition imposed by or under this Act.

[SEC. 403. PRIVATE RIGHT OF ACTION]

TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

ADDITIONAL MEASURES

SEC. 501. (a) It shall be the policy of the United States to impose additional measures against the Government of South Africa if substantial progress has not been made within twelve months of the date of enactment of this Act in ending the system of apartheid and establishing a nonracial democracy.

(b) The President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate within twelve months of the date of enactment of this Act, and every twelve months thereafter, a report on the extent to which significant progress has been made toward ending the system of apartheid, including—

(1) an assessment of the extent to which the Government of South Africa has taken the steps set forth in section 101(b) of this Act;

(2) an analysis of any other actions taken by the Government of South Africa in ending the system of apartheid and moving toward a nonracial democracy; and

(3) the progress, or lack of progress, made in reaching a negotiated settlement to the conflict in South Africa.

(c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a nonracial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures should be imposed:

(1) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa;

(2) a prohibition on the importation of diamonds from South Africa;

(3) a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals; and

(4) a prohibition on the importation into the United States of strategic minerals from South Africa.

(d) A joint resolution which would enact part or all of the measures recommended by the President pursuant to subsection (c) shall be considered in accordance with the provisions of section 602 of this Act.

LIFTING OF PROHIBITIONS

SEC. 502. (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer country of the Council for Mutual Economic Assistance (C.M.E.A.) for the importation of coal or any strategic and critical material to an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.

(b)(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a)—

(A) the average amount of such imports from such country during the period of 1981 through 1985; and

(B) the current amount of such imports from such country entering the United States.

(2) Thirty days after transmittal of the report required by paragraph (1), and every thirty days thereafter, the President shall prepare and transmit to the Congress a report containing the information described in paragraph (1)(B).

[SEC. 503. STUDY OF HEALTH CONDITIONS IN THE "HOMELANDS" AREAS OF SOUTH AFRICA]

REPORT ON SOUTH AFRICAN IMPORTS

SEC. 504. (a) Not later than 90 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the extent to which the United States is dependent on the importation from South Africa of—

(1) chromium,

(2) cobalt,

(3) manganese,

(4) platinum group metals,

(5) ferroalloys, and

(6) other strategic and critical materials (within the meaning of the Strategic and Critical Materials Stock Piling Act).

(b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).

[SEC. 505. STUDY AND REPORT ON THE ECONOMY OF SOUTHERN AFRICA]

[SEC. 506. REPORT ON RELATIONS BETWEEN OTHER INDUSTRIALIZED DEMOCRACIES AND SOUTH AFRICA]

[SEC. 507. STUDY AND REPORT ON DEPOSIT ACCOUNTS OF SOUTH AFRICAN NATIONALS IN UNITED STATES BANKS]

STUDY AND REPORT ON THE VIOLATION OF THE INTERNATIONAL EMBARGO ON SALE AND EXPORT OF MILITARY ARTICLES TO SOUTH AFRICA

SEC. 508. (a) The President shall conduct a study on the extent to which the international embargo on the sale and exports of arms and military technology to South Africa is being violated.

(b) Not later than 179 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study required by subsection (a), including an identification of those countries engaged in such sale or export, with a view to terminating United States military assistance to those countries.

[SEC. 509. REPORT ON COMMUNIST ACTIVITIES IN SOUTH AFRICA]

PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS

SEC. 510. (a) No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

(b) Any individual who violates this section or any regulations issued to carry out this section shall be fined not more than five times the value of the gold coins involved.

[SEC. 511. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS]

[SEC. 512. REPORT ON THE AFRICAN NATIONAL CONGRESS]

TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

REGULATORY AUTHORITY

SEC. 601. The President shall issue such rules, regulations, licenses, and orders as are necessary to carry out the provisions of this Act, including taking such steps as may be necessary to continue in effect the measures imposed by Executive Order 12532 of September 9, 1985, and Executive Order 12535 of October 1, 1985, and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not inconsistent with this Act.)

CONGRESSIONAL PRIORITY PROCEDURES

SEC. 602. (a)(1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311(b), 318(b), 401(d), and 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.

(3)(A) At any time after the joint resolution placed on the appropriate calendar has been on that calendar for a period of 5 legislative days, it is in order for any Member of the House (after consultation with the Speaker as to the most appropriate time for the consideration of that joint resolution) to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of that joint resolution. The motion is highly privileged and is in order even though a previous motion to the same effect has been disagreed to. All points of order against the joint resolution under clauses 2 and 6 of Rule XXI of the Rules of the House are waived. If the motion is agreed to, the resolution shall remain the unfinished business of the House until disposed of. A motion to reconsider the vote by which the motion is disagreed to shall not be in order.

(B) Debate on the joint resolution shall not exceed ten hours, which shall be divided equally between a Member favoring and a Member opposing the joint resolution. A motion to limit debate is in order at any time in the House or in the Committee of the Whole and is not debatable.

(C) An amendment to the joint resolution is not in order.

(D) At the conclusion of the debate on the joint resolution, the Committee of the Whole shall rise and report the joint resolution back to the House, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

(b)(1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under section 311(b), 318(b), 401(d), or 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Relations of the Senate.

(3) A joint resolution described in this section shall be considered in the Senate in accordance with the procedures contained in paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473), except that—

(A) references in such paragraphs to the Committee on Appropriations of the Senate shall be deemed to be references to the Committee on Foreign Relations of the Senate; and

(B) amendments to the joint resolution are in order.

(c) For purposes of this subsection, the term "joint resolution" means only—

(1) in the case of section 311(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the report of the President containing the determination required by section 311(b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.", with the date of the receipt of the report inserted in the blank;

(2) In the case of section 318(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives a certification of the President pursuant to section 318(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a certification of the President under section 318(b)(2) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's certification.", with the date of the receipt of the certification inserted in the blank;

(3) in the case of section 401(d)(3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401(d)(2) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on the text of the international agreement described in section 401(d)(3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such agreement.", with the date of the receipt of the text of the agreement inserted in the blank; and

(4) in the case of section 501(d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501(c) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on a determination of the President under section 501(c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

(d) As used in this section, the term "legislative day" means a day on which the House of Representatives or the Senate is in session, as the case may be.

(e) This section is enacted—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such it is deemed a part of the Rules of the House and Rules of the Senate, respectively, but applicable only with respect to the procedure to be followed in the House and the Senate in the case of joint resolutions under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of the House and the Senate to change their rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House or Senate, and of the right of the Committee on Rules of the House of Representatives to report a resolution for the consideration of any measure.

ENFORCEMENT AND PENALTIES

SEC. 603. (a)(1) The President with respect to his authorities under section 601 shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders.

(2) In ensuring such compliance, the President may—

(A) require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction described in this Act either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which a foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this Act; and

(B) conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) Except as provided in subsection (d)—

(1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of $50,000;

(2) any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than $1,000,000;

(3) any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than $50,000, or imprisoned not more than 10 years, or both; and

(4) any individual who violates section 301(a) or any regulations issued to carry out that section shall, instead of the penalty set forth in paragraph (2), be fined not more than 5 times the value of the krugerrands or gold coins involved.

(c)(1) Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice,

shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

(2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301(a) of this Act or of any regulation issued to carry out that section.

(3) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(d)(1) Any person who violates any regulation issued under section 208(d) or who, in a registration statement or report required by the Secretary of State, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall be subject to civil penalty of not more than $10,000 imposed by the Secretary of State. The provisions of subsections (d), (e), and (f) of section 11 of the Export Administration Act of 1979 shall apply with respect to any such civil penalty.

(2) Any person who commits a willful violation under paragraph (1) shall upon conviction be fined not more than $1,000,000 or imprisoned not more than 2 years, or both.

(3) Nothing in this section may be construed to authorize the imposition of any penalty for failure to implement the Code of Conduct.

APPLICABILITY TO EVASIONS OF ACT

SEC. 604. This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

[SEC. 605. CONSTRUCTION OF ACT]

[SEC. 606. STATE OR LOCAL ANTI-APARTHEID LAWS, ENFORCE]

Chapter 13: RECIPROCAL TRADE AGREEMENTS

A. Trade Agreement Authorities and Negotiating Objectives

1. U.S. Negotiating Objectives Section 1101 of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2901; P.L. 100–418]

SEC. 1101. OVERALL AND PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES.

(a) OVERALL TRADE NEGOTIATING OBJECTIVES.—The overall trade negotiating objectives of the United States are to obtain—

(1) more open, equitable, and reciprocal market access;

(2) the reduction or elimination of barriers and other trade-distorting policies and practices; and

(3) a more effective system of international trading disciplines and procedures.

(b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

(1) DISPUTE SETTLEMENT.—The principal negotiating objectives of the United States with respect to dispute settlement are—

(A) to provide for more effective and expeditious dispute settlement mechanisms and procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

(2) IMPROVEMENT OF THE GATT AND MULTILATERAL TRADE NEGOTIATION AGREEMENTS.—The principal negotiating objectives of the United States regarding the improvement of GATT and multilateral trade negotiation agreements are—

(A) to enhance the status of the GATT;

(B) to improve the operation and extend the coverage of the GATT and such agreements and arrangements to products, sectors, and conditions of trade not adequately covered; and

(C) to expand country participation in particular agreements or arrangements, where appropriate.

(3) TRANSPARENCY.—The principal negotiating objective of the United States regarding transparency is to obtain broader application of the principle of transparency and clarification of the costs and benefits of trade policy actions through the observance of open and equitable procedures in trade matters by Contracting Parties to the GATT.

(4) DEVELOPING COUNTRIES.—The principal negotiating objectives of the United States regarding developing countries are—

(A) to ensure that developing countries promote economic development by assuming the fullest possible measure of responsibility for achieving and maintaining an open international trading system by providing reciprocal benefits and assuming equivalent obligations with respect to their import and export practices; and

(B) to establish procedures for reducing nonreciprocal trade benefits for the more advanced developing countries.

(5) CURRENT ACCOUNT SURPLUSES.—The principal negotiating objective of the United States regarding current account surpluses is to develop rules to address large and persistent global current account imbalances of countries, including imbalances which threaten the stability of the international trading system, by imposing greater responsibility on such countries to undertake policy changes aimed at restoring current account equilibrium, including expedited implementation of trade agreements where feasible and appropriate.

(6) TRADE AND MONETARY COORDINATION.—The principal negotiating objective of the United States regarding trade and monetary coordination is to develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

(7) AGRICULTURE.—The principal negotiating objectives of the United States with respect to agriculture are to achieve, on an expedited basis to the maximum extent feasible, more open and fair conditions of trade in agricultural commodities by—

(A) developing, strengthening, and clarifying rules for agricultural trade, including disciplines on restrictive or trade-distorting import and export practices;

(B) increasing United States agricultural exports by eliminating barriers to trade (including transparent and nontransparent barriers) and reducing or eliminating the subsidization of agricultural production consistent with the United States policy of agricultural stabilization in cyclical and unpredictable markets;

(C) creating a free and more open world agricultural trading system by resolving questions pertaining to export and other trade-distorting subsidies, market pricing and market access and eliminating and reducing substantially other specific constraints to fair trade and more open market access, such as tariffs, quotas, and other nontariff practices, including unjustified phytosanitary and sanitary restrictions; and

(D) seeking agreements by which the major agricultural exporting nations agree to pursue policies to reduce excessive production of agricultural commodities during periods of oversupply, with due regard for the fact that the United States already undertakes such policies, and without recourse to arbitrary schemes to divide market shares among major exporting countries.

(8) UNFAIR TRADE PRACTICES.—The principal negotiating objectives of the United States with respect to unfair trade practices are—

(A) to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices;

(B) to obtain the application of similar rules to the treatment of primary and nonprimary products in the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the GATT (relating to subsidies and countervailing measures); and

(C) to obtain the enforcement of GATT rules against—

(i) state trading enterprises, and

(ii) the acts, practices, or policies of any foreign government which, as a practical matter, unreasonably require that—

(I) substantial direct investment in the foreign country be made,

(II) intellectual property be licensed to the foreign country or to any firm of the foreign country, or

(III) other collateral concessions be made,

as a condition for the importation of any product or service of the United States into the foreign country or as a condition for carrying on business in the foreign country.

(9) TRADE IN SERVICES.—

(A) The principal negotiating objectives of the United States regarding trade in services are—

(i) to reduce or to eliminate barriers to, or other distortions of, international trade in services, including barriers that deny national treatment and restrictions on establishment and operation in such markets; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) are consistent with the commercial policies of the United States, and

(II) will reduce or eliminate such barriers or distortions, and help ensure fair, equitable opportunities for foreign markets.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(10) INTELLECTUAL PROPERTY.—The principal negotiating objectives of the United States regarding intellectual property are—

(A) to seek the enactment and effective enforcement by foreign countries of laws which—

(i) recognize and adequately protect intellectual property, including copyrights, patents, trademarks, semiconductor chip layout designs, and trade secrets, and

(ii) provide protection against unfair competition,

(B) to establish in the GATT obligations—

(i) to implement adequate substantive standards based on—

(I) the standards in existing international agreements that provide adequate protection, and

(II) the standards in national laws if international agreement standards are inadequate or do not exist,

(ii) to establish effective procedures to enforce, both internally and at the border, the standards implemented under clause (i), and

(iii) to implement effective dispute settlement procedures that improve on existing GATT procedures;

(C) to recognize that the inclusion in the GATT of—

(i) adequate and effective substantive norms and standards for the protection and enforcement of intellectual property rights, and

(ii) dispute settlement provisions and enforcement procedures,

is without prejudice to other complementary initiatives undertaken in other international organizations; and

(D) to supplement and strengthen standards for protection and enforcement in existing international intellectual property conventions administered by other international organizations, including their expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

(11) FOREIGN DIRECT INVESTMENT.—

(A) The principal negotiating objectives of the United States regarding foreign direct investment are—

(i) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which—

(I) will help ensure a free flow of foreign direct investment, and

(II) will reduce or eliminate the trade distortive effects of certain trade-related investment measures.

(B) In pursuing the negotiating objectives described in subparagraph (A), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(12) SAFEGUARDS.—The principal negotiating objectives of the United States regarding safeguards are—

(A) to improve and expand rules and procedures covering safeguard measures;

(B) to ensure that safeguard measures are—

(i) transparent,

(ii) temporary,

(iii) degressive, and

(iv) subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and

(C) to require notification of, and to monitor the use by, GATT Contracting Parties of import relief actions for their domestic industries.

(13) SPECIFIC BARRIERS.—The principal negotiating objective of the United States regarding specific barriers is to obtain competitive opportunities for United States exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to United States markets, including the reduction or elimination of specific tariff and nontariff trade barriers, particularly—

(A) measures identified in the annual report prepared under section 181 of the Trade Act of 1974 (19 U.S.C. 2241); and

(B) foreign tariffs and nontariff barriers on competitive United States exports when like or similar products enter the United States at low rates of duty or are duty-free, and other tariff disparities that impede access to particular export markets.

(14) WORKER RIGHTS.—The principal negotiating objectives of the United States regarding worker rights are—

(A) to promote respect for worker rights;

(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

(15) ACCESS TO HIGH TECHNOLOGY.—

(A) The principal negotiating objective of the United States regarding access to high technology is to obtain the elimination or reduction of foreign barriers to, and acts, policies, or practices by foreign governments which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(i) restricting the participation of United States persons in government-supported research and development projects;

(ii) denying equitable access by United States persons to government-held patents;

(iii) requiring the approval or agreement of government entities, or imposing other forms of government interventions, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(iv) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(B) In pursuing the negotiating objective described in subparagraph (A), the United States negotiators shall take into account United States Government policies in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

(16) BORDER TAXES.—The principal negotiating objective of the United States regarding border taxes is to obtain a revision of the GATT with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily for revenue on direct taxes rather than indirect taxes.

Sections 1124 and 3004 of Omnibus Trade and Competitiveness Act of 1988

[22 U.S.C. 5304 note, and 5304; P.L. 100–418]

SEC. 1124. NEGOTIATIONS ON CURRENCY EXCHANGE RATES.

(a) FINDINGS.—The Congress finds that—

(1) the benefit of trade concessions can be adversely affected by misalignments in currency, and

(2) misalignments in currency caused by government policies intended to maintain an unfair trade advantage tend to nullify and impair trade concessions.

(b) NEGOTIATIONS.—Whenever, in the course of negotiating a trade agreement under this subtitle, the President is advised by the Secretary of the Treasury that a foreign country that is a party to the negotiations satisfies the criteria for initiating bilateral currency negotiations listed in section 3004(b) of this Act, the Secretary of the Treasury shall take action to initiate bilateral currency negotiations on an expedited basis with such foreign country.

SEC. 3004. INTERNATIONAL NEGOTIATIONS ON EXCHANGE RATE AND ECONOMIC POLICIES.

(a) MULTILATERAL NEGOTIATIONS.—The President shall seek to confer and negotiate with other countries—

(1) to achieve—

(A) better coordination of macroeconomic policies of the major industrialized nations; and

(B) more appropriate and sustainable levels of trade and current account balances, and exchange rates of the dollar and other currencies consistent with such balances; and

(2) to develop a program for improving existing mechanisms for coordination and improving the functioning of the exchange rate system to provide for long-term exchange rate stability consistent with more appropriate and sustainable current account balances.

(b) BILATERAL NEGOTIATIONS.—The Secretary of the Treasury shall analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade. If the Secretary considers that such manipulation is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States, the Secretary of the Treasury shall take action to initiate negotiations with such foreign countries on an expedited basis, in the International Monetary Fund or bilaterally, for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage. The Secretary shall not be required to initiate negotiations in cases where such negotiations would have a serious detrimental impact on vital national economic and security interests; in such cases, the Secretary shall inform the chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives of his determination.

2. Trade Agreement Authorities and Implementation

Sections 1102, 1103, 1105(b), 1106, and 1107 of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2902; P.L. 100-418]

SEC. 1102. TRADE AGREEMENT NEGOTIATING AUTHORITY.

(a) AGREEMENTS REGARDING TARIFF BARRIERS.—

(1) Whenever the President determines that one or more existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes, policies, and objectives of this title will be promoted thereby, the President—

(A) before June 1, 1993, may enter into trade agreements with foreign countries; and

(B) may, subject to paragraphs (2) through (5), proclaim—

(i) such modification or continuance of any existing duty,

(ii) such continuance of existing duty-free or excise treatment, or

(iii) such additional duties;

as he determines to be required or appropriate to carry out any such trade agreement.

(2) No proclamation may be made under subsection (a) that—

(A) reduces any rate of duty (other than a rate of duty that does not exceed 5 percent ad valorem on the date of enactment of this Act) to a rate which is less than 50 percent of the rate of such duty that applies on such date of enactment; or

(B) increases any rate of duty above the rate that applies on such date of enactment.

(3)(A) Except as provided in subparagraph (B), the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement entered into under paragraph (1) shall not exceed the aggregate reduction which would have been in effect on such day if a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed in paragraph (1) to carry out such agreement with respect to such article.

(B) No staging under subparagraph (A) is required with respect to a rate reduction that is proclaimed under paragraph (1) for an article of a kind that is not produced in the United States. The United States International Trade Commission shall advise the President of the identity of articles that may be exempted from staging under this subparagraph.

(4) If the President determines that such action will simplify the computation of reductions under paragraph (3), the President may round an annual reduction by the lesser of—

(A) the difference between the reduction without regard to this paragraph and the next lower whole number; or

(B) one-half of 1 percent ad valorem.

(5) No reduction in a rate of duty under a trade agreement entered into under subsection (a) on any article may take effect more than 10 years after the effective date of the first reduction under paragraph (1) that is proclaimed to carry out the trade agreement with respect to such article.

(6) A rate of duty reduction or increase that may not be proclaimed by reason of paragraph (2) may take effect only if a provision authorizing such reduction or increase is included within an implementing bill provided for under section 1103 and that bill is enacted into law.

(b) Agreements Regarding Nontariff Barriers.—

(1) Whenever the President determines that any barrier to, or other distortion of, international trade—

(A) unduly burdens or restricts the foreign trade of the United States or adversely affects the United States economy; or

(B) the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect;

and that the purposes, policies, and objectives of this title will be promoted thereby, the President may, before June 1, 1993, enter into a trade agreement with foreign countries providing for—

(i) the reduction or elimination of such barrier or other distortion; or

(ii) the prohibition of, or limitations on the imposition of, such barrier or other distortion.

(2) A trade agreement may be entered into under this subsection only if such agreement makes progress in meeting the applicable objectives described in section 1101.

(c) BILATERAL AGREEMENTS REGARDING TARIFF AND NONTARIFF BARRIERS.—

(1) Before June 1, 1993, the President may enter into bilateral trade agreements with foreign countries that provide for the elimination or reduction of any duty imposed by the United States. A trade agreement entered into under this paragraph may also provide for the reduction or elimination of barriers to, or other distortions of, the international trade of the foreign country or the United States.

(2) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(3) A trade agreement may be entered into under paragraph (1) with any foreign country only if—

(A) the agreement makes progress in meeting the applicable objectives described in section 1101;

(B) such foreign country requests the negotiation of such an agreement; and

(C) the President, at least 60 days before the date notice is provided under section 1103(a)(1)(A)—

(i) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(ii) consults with such committees regarding the negotiation of such agreement.

(4) The 60-day period of time described in paragraph (3)(B) shall be computed in accordance with section 1103(f).

(5) In any case in which there is an inconsistency between any provision of this Act and any bilateral free trade area agreement that entered into force and effect with respect to the United States before January 1, 1987, the provision shall not apply with respect to the foreign country that is party to that agreement.

(d) CONSULTATION WITH CONGRESS BEFORE AGREEMENTS ENTERED INTO.—

(1) Before the President enters into any trade agreement under subsection (b) or (c), the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(2) The consultation under paragraph (1) shall include—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of this title; and

(C) all matters relating to the implementation of the agreement under section 1103.

(3) If it is proposed to implement two or more trade agreements in a single implementing bill under section 1103, the consultation under paragraph (1) shall include the desirability and feasibility of such proposed implementation.

SEC. 1103. IMPLEMENTATION OF TRADE AGREEMENTS.

(a) IN GENERAL.—

(1) Any agreement entered into under section 1102 (b) or (c) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President submits a document to the House of Representatives and to the Senate containing a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of this title,

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement;

(iii) describing the efforts made by the President to obtain international exchange rate equilibrium and any effect the agreement may have regarding increased international monetary stability; and

(iv) describing the extent, if any, to which—

(I) each foreign country that is a party to the agreement maintains non-commercial state trading enterprises that may adversely affect, nullify, or impair the benefits to the United States under the agreement, and

(II) the agreement applies to or affects purchases and sales by such enterprises.

(3) To ensure that a foreign country which receives benefits under a trade agreement entered into under section 1102 (b) or (c) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(b) APPLICATION OF CONGRESSIONAL "FAST TRACK" PROCEDURES TO IMPLEMENTING BILLS.—

(1) Except as provided in subsection (c)—

(A) the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) (hereinafter in this section referred to as "fast track procedures") apply to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) before June 1, 1991; and

(B) such fast track procedures shall be extended to implementing bills submitted with respect to trade agreements entered into under section 1102 (b) or (c) after May 31, 1991, and before June 1, 1993, if (and only if)—

(i) the President requests such extension under paragraph (2); and

(ii) neither House of the Congress adopts an extension disapproval resolution under paragraph (5) before June 1, 1991.

(2) If the President is of the opinion that the fast track procedures should be extended to implementing bills described in paragraph (1)(B), the President must submit to the Congress, no later than March 1, 1991, a written report that contains a request for such extension, together with—

(A) a description of all trade agreements that have been negotiated under section 1102 (b) or (c) and the anticipated schedule for submitting such agreements to the Congress for approval;

(B) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title, and a statement that such progress justifies the continuation of negotiations; and

(C) a statement of the reasons why the extension is needed to complete the negotiations.

(3) The President shall promptly inform the Advisory Committee for Trade Policy and Negotiations established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) of his deci-

sion to submit a report to Congress under paragraph (2). The Advisory Committee shall submit to the Congress as soon as practicable, but no later than March 1, 1991, a written report that contains—

(A) its views regarding the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives of this title; and

(B) a statement of its views, and the reasons therefor, regarding whether the extension requested under paragraph (2) should be approved or disapproved.

(4) The reports submitted to the Congress under paragraphs (2) and (3), or any portion of the reports, may be classified to the extent the President determines appropriate.

(5)(A) For purposes of this subsection, the term "extension disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the disapproves the request of the President for the extension, under section 1103(b)(1)(B)(i) of the Omnibus Trade and Competitiveness Act of 1988, of the provisions of section 151 of the Trade Act of 1974 to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act after May 31, 1991, because sufficient tangible progress has not been made in trade negotiations.", with the blank space being filled with the name of the resolving House of the Congress.

(B) Extension disapproval resolutions—

(i) may be introduced in either House of the Congress by any member of such House; and

(ii) shall be jointly referred, in the House of Representatives, to the Committee on Ways and Means and the Committee on Rules.

(C) The provisions of section 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to extension disapproval resolutions.

(D) It is not in order for—

(i) the Senate to consider any extension disapproval resolution not reported by the Committee on Finance;

(ii) the House of Representatives to consider any extension disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules; or

(iii) either House of the Congress to consider an extension disapproval resolution that is reported to such House after May 15, 1991.

(c) LIMITATIONS ON USE OF "FAST TRACK" PROCEDURES.—

(1)(A) The fast track procedures shall not apply to any implementing bill submitted with respect to a trade agreement entered into under section 1102 (b) or (c) if both Houses of the Congress separately agree to procedural disapproval resolutions within any 60-day period.

(B) Procedural disapproval resolutions—

(i) in the House of Representatives—

(I) shall be introduced by the chairman or ranking minority member of the Committee on Ways and Means or the chairman or ranking minority member of the Committee on Rules,

(II) shall be jointly referred to the Committee on Ways and Means and the Committee on Rules, and

(III) may not be amended by either Committee; and

(ii) in the Senate shall be original resolutions of the Committee on Finance.

(C) The provisions of section 152 (d) and (e) of the Trade Act of 1974 (19 U.S.C. 2192 (d) and (e)) (relating to the floor consideration of certain resolutions in the House and Senate) apply to procedural disapproval resolutions.

(D) It is not in order for the House of Representatives to consider any procedural disapproval resolution not reported by the Committee on Ways and Means and the Committee on Rules.

(E) For purposes of this subsection, the term "procedural disapproval resolution" means a resolution of either House of the Congress, the sole matter after the resolving clause of which is as follows: "That the President has failed or refused to consult with Congress on trade negotiations and trade agreements in accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, and, therefore, the provisions of section 151 of the Trade Act of 1974 shall not apply to any implementing bill submitted with respect to any trade agreement entered into under section 1102 (b) or (c) of such Act of 1988, if, during the 60-day period beginning on the date on which this resolution is agreed to by the   , the   agrees to a procedural disapproval resolution (within the meaning of section 1103(c)(1)(E) of such Act of 1988).", with the first blank space being filled with the name of the resolving House of the Congress and the second blank space being filled with the name of the other House of the Congress.

(2) The fast track procedures shall not apply to any implementing bill that contains a provision approving of any trade agreement which is entered into under section 1102(c) with any foreign country if either—

(A) the requirements of section 1102(c)(3) are not met with respect to the negotiation of such agreement; or

(B) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproves of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under section 1102(c)(3)(C)(i) with respect to the negotiation of such agreement.

(d) Rules of House of Representatives and Senate.—Subsections (b) and (c) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the pro-

cedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(e) COMPUTATION OF CERTAIN PERIODS OF TIME.—Each period of time described in subsection (c)(1) (A) and (E) and (2) of this section shall be computed without regard to—

(1) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House of the Congress is not in session.

SEC. 1105. TERMINATION AND RESERVATION AUTHORITY; RECIPROCAL NONDISCRIMINATORY TREATMENT.

[(a) IN GENERAL.—Cross references to sections 125, 126(a), and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)]

(b) RECIPROCAL NONDISCRIMINATORY TREATMENT.—

(1) The President shall determine, before June 1, 1993, whether any major industrial country has failed to make concessions under trade agreements entered into under section 1102 (a) and (b) which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under section 1102 (a) and (b), for the commerce of such country in the United States.

(2) If the President determines under paragraph (1) that a major industrial country has not made concessions under trade agreements entered into under section 1102 (a) and (b) which provide substantially equivalent competitive opportunities for the commerce of the United States, the President shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommend to the Congress—

(A) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under section 1102 (a) and (b) that have been made with respect to rates of duty or other import restrictions imposed by the United States, and

(B) legislation providing that any law necessary to carry out any trade agreement under section 1102 (a) or (b) not apply to such country.

(3) For purposes of this subsection, the term "major industrial country" means Canada, the European Communities, the individual member countries of the European Communities, Japan, and any other foreign country designated by the President for purposes of this subsection.

SEC. 1106. ACCESSION OF STATE TRADING REGIMES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE.

(a) IN GENERAL.—Before any major foreign country accedes, after the date of enactment of this Act, to the GATT the President shall determine—

(1) whether state trading enterprises account for a significant share of—

(A) the exports of such major foreign country, or

(B) the goods of such major foreign country that are subject to competition from goods imported into such foreign country; and

(2) whether such state trading enterprises—

(A) unduly burden and restrict, or adversely affect, the foreign trade of the United States or the United States economy, or

(B) are likely to result in such a burden, restriction, or effect.

(b) Effects of Affirmative Determination.—If both of the determinations made under paragraphs (1) and (2) of subsection (a) with respect to a major foreign country are affirmative—

(1) the President shall reserve the right of the United States to withhold extension of the application of the GATT, between the United States and such major foreign country, and

(2) the GATT shall not apply between the United States and such major foreign country until—

(A) such foreign country enters into an agreement with the United States providing that the state trading enterprises of such foreign country—

(i) will—

(I) make purchases which are not for the use of such foreign country, and

(II) make sales in international trade,

in accordance with commercial considerations (including price, quality, availability, marketability, and transportation), and

(ii) will afford United States business firms adequate opportunity, in accordance with customary practice, to compete for participation in such purchases or sales; or

(B) a bill submitted under subsection (c) which approves of the extension of the application of the GATT between the United States and such major foreign country is enacted into law.

(c) Expedited Consideration of Bill To Approve Extension.—

(1) The President may submit to the Congress any draft of a bill which approves of the extension of the application of the GATT between the United States and a major foreign country.

(2) Any draft of a bill described in paragraph (1) that is submitted by the President to the Congress shall—

(A) be introduced by the majority leader of each House of the Congress (by request) on the first day on which such House is in session after the date such draft is submitted to the Congress; and

(B) shall be treated as an implementing bill for purposes of subsections (d), (e), (f), and (g) of section 151 of the Trade Act of 1974.

(d) Publication.—The President shall publish in the Federal Register each determination made under subsection (a).

SEC. 1107. DEFINITIONS AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—For purposes of this part [trade agreement and implementation authorities under sections 1101–1106 of the Omnibus Trade and Competitiveness Act of 1988]:

(1) The term "distortion" includes, but is not limited to, a subsidy.

(2) The term "foreign country" includes any foreign instrumentality. Any territory or possession of a foreign country that is administered separately for customs purposes, shall be treated as a separate foreign country.

(3) The term "GATT" means the General Agreement on Tariffs and Trade.

(4) The term "implementing bill" has the meaning given such term in section 151(b)(1) of the Trade Act of 1974 (19 U.S.C. 2191(b)(1)).

(5) The term "international trade" includes, but is not limited to—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(6) The term "state trading enterprise" means—

(A) any agency, instrumentality, or administrative unit of a foreign country which—

(i) purchases goods or services in international trade for any purpose other than the use of such goods or services by such agency, instrumentality, administrative unit, or foreign country, or

(ii) sells goods or services in international trade; or

(B) any business firm which—

(i) is substantially owned or controlled by a foreign country or any agency, instrumentality, or administrative unit thereof,

(ii) is granted (formally or informally) any special or exclusive privilege by such foreign country, agency, instrumentality, or administrative unit, and

(iii) purchases goods or services in international trade for any purpose other than the use of such goods or services by such foreign country, agency, instrumentality, or administrative unit, or which sells goods or services in international trade.

Section 121 of Trade Act of 1974, as amended

[19 U.S.C. 2131; P.L. 93–618, as amended by P.L. 100–647]

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

3. Specific Trade Agreement Authorities

Section 123 of Trade Act of 1974, as amended

[19 U.S.C. 2133; P.L. 93-618, as amended by P.L. 100-418]

SEC. 123. COMPENSATION AUTHORITY.

(a) Whenever—

(1) any action taken under chapter 1 of title II or chapter 1 of title III; or

(2) any judicial or administrative tariff reclassification that becomes final after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988;

increases or imposes any duty or other import restriction, the President—

(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 1102(a) by not more than 30 percent of such a rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under section 1102(a).

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant import relief under section 203(h).

(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) Notwithstanding the provisions of subsection (a), the authority delegated under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary or appropriate to meet the international obligations of the United States.

Section 125 of Trade Act of 1974

[19 U.S.C. 2135; P.L. 93-618]

SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.

(a) Every trade agreement entered into under this Act shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) The President may at any time terminate, in whole or in part, any proclamation made under this Act.

(c) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights granted to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality; and

(2) proclaim under subsection (c) such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930 shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the

United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress is recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Before taking any action pursuant to subsection (b), (c), or (d), the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

[Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 provides a cross-reference to trade agreements entered into under section 1102 of that Act:

[(a) IN GENERAL.—For purposes of applying sections 125, 126(a), and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

> [(1) any trade agreement entered into under section 1102 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C 2111 or 2112); and
>
> [(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 1102 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.]

Section 128 of Trade Act of 1974, as Added by Section 308 of Trade and Tariff Act of 1984, as amended

[19 U.S.C. 2114e, 2138; P.L. 98-573, as amended by P.L. 99-514 and P.L. 100-418]

SEC. 308. NEGOTIATION OF AGREEMENTS CONCERNING HIGH TECHNOLOGY INDUSTRIES.

(a) The President may enter into such bilateral or multilateral agreements as may be necessary or appropriate to achieve the objectives of this section and the negotiating objectives under section 104A(c) of the Trade Act of 1974.

(b)(1) Chapter 2 of title I is amended by inserting at the end thereof the following new section:

"SEC. 128. MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.

"(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

> "(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or
>
> "(2) such additional duties,

as he deems appropriate.

"(b) The President shall exercise his authority under subsection (a) of this section only with respect to the following subheadings listed in the Harmonized Tariff Schedule of the United States—

"(1) transistors (provided for in subheadings 8541.21.00, 8541.29.00, and 8541.40.70);

"(2) diodes and rectifiers (provided for in subheadings 8541.10.00, 8541.30.00, and 8541.40.60);

"(3) monolithic integrated circuits (provided for in subheadings 8542.11.00 and 8542.19.00);

"(4) other integrated circuits (provided for in subheading 8542.20.00);

"(5) other components (provided for in subheading 8541.50.00);

"(6) parts of semiconductors (provided for in subheadings 8541.90.00 and 8542.90.00);

"(7) units of automatic data processing machines (provided for in subheadings 8471.92.20, 8471.92.30, 8471.92.70, 8471.92.80, 8471.93.10, 8471.93.15, 8471.93.30, 8471.93.50, 8471.99.15, and 8471.99.60) and parts (provided for in subheading 8473.30.40), all the foregoing not incorporating a cathode ray tube"; and

"(8) Digital processing units for automatic data processing machines, unhoused, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in an automatic data processing machine of subheading 8471.20 (provided for in subheading 8471.91).".

"(c) TERMINATION.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the International Trade and Investment Act.".

(2) The table of contents of chapter 1 of title I is amended by adding at the end thereof the following new item:

"Sec. 128. Modification and continuance of treatment with respect to duties on high technology products.".

4. Trade Negotiation Procedural Requirements

Sections 131–134 of Trade Act of 1974, as amended

[19 U.S.C. 2151–2154; P.L. 93–618, as amended by P.L. 100–418]

SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

(1) In connection with any proposed trade agreement under section 123 of this Act or section 1102 (a) or (c) of the Omnibus Trade and Competitiveness Act of 1988, the President shall from time to time publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate

of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 1102 (b) or (c) of the Omnibus Trade and Competitiveness Act of 1988, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) ADVICE TO PRESIDENT BY COMMISSION.—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 1102(a)(3)(A).

(c) ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) COMMISSION STEPS IN PREPARING ITS ADVICE TO THE PRESIDENT.—In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on

the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) PUBLIC HEARING.—In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings. .

SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.

Before any trade agreement is entered into under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

SEC. 133. PUBLIC HEARINGS.

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such procedures shall apply to the development of trade policy and priorities.

(b) SUMMARY OF HEARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.

SEC. 134. PREREQUISITES FOR OFFERS.

(a) In any negotiation seeking an agreement under section 123 of this Act or section 1102 of the Omnibus Trade and Competitiveness Act of 1988, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) the Commission;

(2) any advisory committee established under section 135; or

(3) any organization that holds public hearings under section 133;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

Section 127 (a) and (b) of Trade Act of 1974

[19 U.S.C. 2137; P.L. 93-618]

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) No proclamation shall be made pursuant to the provisions of this Act reducing or eliminating the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Where there is in effect with respect to any article any action taken under section 203 of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

[Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 provides a cross reference to trade agreements entered into under section 1102 of that Act:

[(a) In General.—For purposes of applying sections 125, 126(a), and 127 of the Trade Act of 1974 (19 U.S.C. 2135, 2136(a), and 2137)—

[(1) any trade agreement entered into under section 1102 shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the Trade Act of 1974 (19 U.S.C. 2111 or 2112); and

[(2) any proclamation or Executive order issued pursuant to a trade agreement entered into under section 1102 shall be treated as a proclamation or Executive order issued pursuant to a trade agreement entered into under section 102 of the Trade Act of 1974.]

B. IDENTIFICATION OF, AND ACTION ON, SPECIFIC FOREIGN TRADE BARRIERS

1. National Trade Estimate Report

Section 181 of Trade Act of 1974, as amended

[19 U.S.C. 2241 note, P.L. 93-618, as added by P.L. 98-573 and amended by P.L. 100-418]

SEC. 181. ESTIMATES OF BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) IN GENERAL.—For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 and with the assistance of the interagency advisory committee established under section 141(d)(2), shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services;

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A); and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States, and

(ii) the value of additional foreign direct investment by United States persons, that would have been exported to, or invested in, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) CERTAIN FACTORS TAKEN INTO ACCOUNT IN MAKING ANALYSIS AND ESTIMATE.—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate committees established pursuant to section 135; and

(E) the actual increase in—

(i) the value of goods and services of the United States exported to, and

(ii) the value of foreign direct investment made in, the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) Annual revisions and updates.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Report to Congress.—

(1) On or before April 30, 1989, and on or before March 31 of each succeeding calendar year, the Trade Representative shall submit a report on the analysis and estimates made under subsection (a) for the calendar year preceding such calendar year (which shall be known as the "National Trade Estimate") to the President, the Committee on Finance of the Senate, and appropriate committees of the House of Representatives.

(2) Reports to include information with respect to action being taken.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301, or

(B) negotiations or consultations with foreign governments.

(3) Consultation with Congress on trade policy priorities.—The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) Assistance of Other Agencies.—

(1) Furnishing of information.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

2. Intellectual Property Rights

Section 182 of Trade Act of 1974, as Added by Section 1303 of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2242; P.L. 93-618, as added by P.L. 100-418]

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the "Trade Representative") shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) SPECIAL RULES FOR IDENTIFICATIONS.—

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officers of the Federal Government, and

(B) take into account information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b) and petitions submitted under section 302.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

(c) Revocations and Additional Identifications.—

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

(d) Definitions.—For purposes of this section—

(1) The term "persons that rely upon intellectual property protection" means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17, United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright, patent, or process patent through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(e) Publication.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).

3. Telecommunications Trade

Title I, Subtitle C, Part 4 of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 3101; P.L. 100–418]

SEC. 1371. SHORT TITLE.

This part may be cited as the "Telecommunications Trade Act of 1988".

SEC. 1372. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services is likely to continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services, and

(ii) export-related employment and consumer services in the United States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has contributed, and will continue to contribute, to an increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications;

(5) unless this imbalance is corrected through the achievement of mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries, the United States should avoid granting continued open access to the telecommunications products and services of such foreign countries in the United States market; and

(6) the unique business conditions in the worldwide market for telecommunications products and services caused by the combination of deregulation and divestiture in the United States, which represents a unilateral liberalization of United States trade with the rest of the world, and continuing government intervention in the domestic industries of many other countries create a need to make an exception in the case of telecommunications products and services that should not necessarily be a precedent for legislating specific sectoral prior-

ities in combating the closed markets or unfair foreign trade practices of other countries.

(b) Purposes.—The purposes of this part are—

(1) to foster the economic and technological growth of, and employment in, the United States telecommunications industry;

(2) to secure a high quality telecommunications network for the benefit of the people of the United States;

(3) to develop an international consensus in favor of open trade and competition in telecommunications products and services;

(4) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and

(5) to achieve a more open world trading system for telecommunications products and services through negotiation and provision of mutually advantageous market opportunities for United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

SEC. 1373. DEFINITIONS.

For purposes of this part—

(1) The term "Trade Representative" means the United States Trade Representative.

(2) The term "telecommunications product" means—

(A) any paging devices provided for under item 685.65 of such Schedules, and

(B) any article classified under any of the following item numbers of such Schedules:

684.57
684.58
684.59
684.65
684.66
684.67
684.80
685.16
685.24
685.25
685.28
685.30
685.31
685.33
685.34
685.39
685.48
688.17
688.41
707.90.

SEC. 1374. INVESTIGATION OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(a) In General.—The Trade Representative shall conduct an investigation to identify priority foreign countries. Such investigation shall be concluded by no later than the date that is 5 months after the date of enactment of this Act.

(b) Factors To Be Taken Into Account.—In identifying priority foreign countries under subsection (a), the Trade Representative shall take into account, among other relevant factors—

(1) the nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms;

(2) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market;

(3) the potential size of the market of a foreign country for telecommunications products and services of United States firms;

(4) the potential to increase United States exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(5) measurable progress being made to eliminate the objectionable acts, policies, or practices.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time, after taking into account the factors described in subsection (b)—

(A) revoke the identification of any priority foreign country that was made under this section, or

(B) identify any foreign country as a priority foreign country under this section,

if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) of the Trade Act of 1974 a detailed explanation of the reasons for the revocation under paragraph (1) of this subsection of any identification of any foreign country as a priority foreign country.

(d) REPORT TO CONGRESS.—By no later than the date that is 30 days after the date on which the investigation conducted under subsection (a) is completed, the United States Trade Representative shall submit a report on the investigation to the President and to appropriate committees of the Congress.

SEC. 1375. NEGOTIATIONS IN RESPONSE TO INVESTIGATION.

(a) IN GENERAL.—Upon—

(1) the date that is 30 days after the date on which any foreign country is identified in the investigation conducted under section 1374(a) as a priority foreign country, and

(2) the date on which any foreign country is identified under section 1374(c)(1)(B) as a priority foreign country,

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under part 1 of subtitle A which meets the specific negotiating objectives established by the President under subsection (b) for such priority foreign country.

(b) ESTABLISHMENT OF SPECIFIC NEGOTIATING OBJECTIVES FOR EACH FOREIGN PRIORITY COUNTRY.—

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including—

(i) changed practices by the priority foreign country,

(ii) tangible substantive developments in multilateral negotiations,

(iii) changes in competitive positions, technological developments, or

(iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) General Negotiating Objectives.—The general negotiating objectives of the United States under this section are—

(1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;

(2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and

(3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflects the competitiveness of the United States telecommunications industry.

(d) Specific Negotiating Objectives.—The specific negotiating objectives of the United States under this section regarding telecommunications products and services are to obtain—

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel;

(8) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.

SEC. 1376. ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.

(a) IN GENERAL.—

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 1374 which achieves the general negotiating objectives described in section 1375(b) as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) ACTIONS AUTHORIZED.—

(1) The President is authorized to take any of the following actions under subsection (a) with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—

(i) the Trade Act of 1974,

(ii) section 201 of the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended to such country pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(c) Negotiating Period.—

(1) For purposes of this section, the term "negotiating period" means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 1374(a), the 18-month period beginning on the date of the enactment of this Act, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

(i) a finding by the President that substantial progress is being made in negotiations with such country, and

(ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) Modification and Termination Authority.—The President may modify or terminate any action taken under subsection (a) if, after taking into consideration the factors described in section

1374(b), the President determines that changed circumstances warrant such modification or termination.

(e) **Report.**—The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) or of the modification or termination of any such action under subsection (d).

SEC. 1377. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) In General.—

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), the Trade Representative shall review the operation and effectiveness of—

(A) each trade agreement negotiated by reason of this part that is in force with respect to the United States; and

(B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)—

(A) is not in compliance with the terms of such agreement, or

(B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.

(b) Review Factors.—

(1) In conducting reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports to a foreign country of telecommunications products and services, including sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission with regard to the actual patterns of trade described in paragraph (1).

(c) Action in Response to Affirmative Determination.—

(1) Any affirmative determination made by the Trade Representative under subsection (a)(2) with respect to any act, policy, or practice of a foreign country shall, for purposes of chapter 1 of title III of the Trade Act of 1974, be treated as an affirmative determination under section 304(a)(1)(A) of such Act that such act, policy, or practice violates a trade agreement.

(2) In taking actions under section 301 by reason of paragraph (1), the Trade Representative shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the Trade Representative determines that actions against other economic sectors would be

more effective in achieving compliance by the foreign country with the trade agreement that is the subject of the affirmative determination made under subsection (a)(2).

SEC. 1378. COMPENSATION AUTHORITY.

If—

(1) the President has taken action under section 1376(a) with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade,

the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

SEC. 1379. CONSULTATIONS.

(a) Advice From Departments and Agencies.—Prior to taking any action under this part, the President shall seek information and advice from the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872).

(b) Advice From the Private Sector.—Before—

(1) the Trade Representative concludes the investigation conducted under section 1374(a) or takes action under section 1374(c),

(2) the President establishes specific negotiating objectives under section 1375(b) with respect to any foreign country, or

(3) the President takes action under section 1376,

the Trade Representative shall provide an opportunity for the presentation of views by any interested party with respect to such investigation, objectives, or action, including appropriate committees established pursuant to section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(c) Consultations With Congress and Official Advisors.—For purposes of conducting negotiations under section 1375(a), the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, currently informed with respect to—

(1) the negotiating priorities and objectives for each priority foreign country;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in subsections (c) and (d) of section 1375.

(d) Modification of Specific Negotiating Objectives.—Before the President takes any action under section 1375(b)(2)(A) to refine or modify specific negotiating objectives, the President shall consult with the Congress and with members of the industry, and representatives of labor, affected by the proposed refinement or modification.

SEC. 1380. SUBMISSION OF DATA; ACTION TO ENSURE COMPLIANCE.

(a) SUBMISSION OF DATA.—The Federal Communications Commission (hereafter in this section referred to as the "Commission") shall periodically submit to appropriate committees of the House of Representatives and of the Senate any data collected and otherwise made public under Report No. DC–1105, "Information Reporting Requirements Established for Common Carriers", adopted February 25, 1988, relating to FCC Docket No. 86–494, adopted December 23, 1987.

(b) ACTION TO ENSURE COMPLIANCE.—

(1)(A) Any product of a foreign country that is subject to registration or approval by the Commission may be entered only if—

(i) such product conforms with all applicable rules and regulations of the Commission, and

(ii) the information which is required on Federal Communications Commission Form 740 on the date of enactment of this Act is provided to the appropriate customs officer at the time of such entry in such form and manner as the Secretary of the Treasury may prescribe.

(B) For purposes of this paragraph, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) The Commission, the Secretary of Commerce, and the Trade Representative shall provide such assistance in the enforcement of paragraph (1) as the Secretary of the Treasury may request.

(3) The Secretary of the Treasury shall compile the information collected under paragraph (1)(A)(ii) into a summary and shall annually submit such summary to the Congress until the authority to negotiate trade agreements under part 1 of subtitle A expires. Such information shall also be made available to the public.

SEC. 1381. STUDY ON TELECOMMUNICATIONS COMPETITIVENESS IN THE UNITED STATES.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Federal Communications Commission and the United States Trade Representative, shall conduct a study of the competitiveness of the United States telecommunications industry and the effects of foreign telecommunications policies and practices on such industry in order to assist the Congress and the President in determining what actions might be necessary to preserve the competitiveness of the United States telecommunications industry.

(b) PUBLIC COMMENT.—The Secretary of Commerce may, as appropriate, provide notice and reasonable opportunity for public comment as part of the study conducted under subsection (a).

(c) REPORT.—The Secretary of Commerce shall, by no later than the date that is 1 year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached by the Secretary of Commerce as a result of the study conducted under subsection (a). Such report shall be referred to the appropriate committees of the House of Representatives and of the Senate.

SEC. 1382. INTERNATIONAL OBLIGATIONS.

Nothing in this part may be construed to require actions inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

4. Trade in Wine

Title IX of Trade and Tariff Act of 1984

[19 U.S.C. 2801; P.L. 98-573]

SEC. 901. SHORT TITLE.

This title may be cited as the "Wine Equity and Export Expansion Act of 1984".

SEC. 902. CONGRESSIONAL FINDINGS AND PURPOSES.

(a) Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;

(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation's winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;

(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and

(5) the United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine exports will create new jobs, improve this Nation's balance of trade, and otherwise strengthen the national economy.

(b) The purposes of this title are—

(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;

(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and

(3) to achieve greater access to foreign markets for United States wine and grape products through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

SEC. 903. DEFINITIONS.

For purposes of this title—

(1) The term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) The term "grape product" means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.

(3) The term "major wine trading country" means any foreign country, or group of foreign countries, designated as such under section 904.

(4) The phase "nontariff barrier to (or other distortion of)", in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.

(5) The term "Trade Representative" means the United States Trade Representative.

(6) The term "United States wine" means wine produced within the customs territory of the United States.

(7) The term "wine" means any fermented alcoholic beverage that—

(A) is made from grapes or other fruit;

(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and

(C) is for nonindustrial use.

SEC. 904. DESIGNATION OF MAJOR WINE TRADING COUNTRIES.

(a) The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—

(1) is a potential significant market for United States wine; and

(2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(b) In deciding, for purposes of subsection (a)(2), whether a foreign country or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Trade Representative shall take into account—

(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);

(2) such relevant actions that may have been taken by that country or group since that review was conducted; and

(3) such information as may be submitted under section 906 by representatives of the wine and grape products industries in the United States, as well as other sources.

SEC. 905. ACTIONS TO REDUCE OR ELIMINATE TARIFF AND NONTARIFF BARRIERS AFFECTING UNITED STATES WINE.

(a) The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontarriff barriers to (or other distortions of) trade in United States wine.

(b)(1) the President shall notify each of the Committees regarding the extent and effect on the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreement Act of 1979, and during the 12-month period beginning on the date of the enactment of this Act, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—

(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine (and that description shall be based upon an updating of the report that was submitted to the Congress under section 854(a) of the Trade Agreements Act of 1979);

(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;

(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, or practice, including, but not limited to—

(i) any action under the Trade Act of 1974, and

(ii) any negotiation or consultation with any foreign government;

(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefore; and

(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 242(a) of the Trade Expansion Act of 1962.

(c) If the President, after taking into account information and advice received under subsections (a) and (b), section 906 or from other sources, determines that action is appropriate to respond to any act, policy, or practice of a major wine trading country constitutes a tariff barrier or nontariff barrier to (for other distortion of) trade in United States wine and—

(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or

(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, shall take all appropriate and feasible action under the Trade Act of 1974 to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

SEC. 906. REQUIRED CONSULTATIONS.

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontarriff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 904;

(2) in developing the reports required under section 905(b); and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 with respect to any act, policy, or practice referred to in section 905(b)(1).

SEC. 907. UNITED STATES WINE EXPORT PROMOTION.

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 to make available sufficient funds to initiate, in cooperation with nongovernmental trade association representative of United States wineries, an export promotion program for United States; and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.

Section 1125 of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2804 note; P.L. 100–418]

SEC. 1125. REPORTS ON NEGOTIATIONS TO ELIMINATE WINE TRADE BARRIERS.

Before the close of the 13-month period beginning on the date of the enactment of this Act, the President shall update each report that the President submitted to the Committee on Ways and Means and the Committee on Finance under section 905(b) of the Wine Equity and Export Expansion Act of 1984 (19 U.S.C. 2804) and submit the updated report to both of such committees. Each updated report shall contain, with respect to the major wine trading country concerned—

(1) a description of each tariff or nontariff barrier to (or other distortion of) trade in United States wine of that country with respect to which the United States Trade Representative has carried out consultations since the report required under such section 905(b) was submitted;

(2) the status of the consultations described under paragraph (1); and

(3) information, explanations, and recommendations of the kind referred to in paragraph (1) (C), (D), and (E) of such section 905(b) that are based on developments (including the taking of relevant actions, if any, of a kind not contemplated at the time of the enactment of such 1984 Act) since the submission of the report required under such section.

C. MOST-FAVORED-NATION (NONDISCRIMINATORY) TREATMENT

1. MFN Principle

Section 251 of Trade Expansion Act of 1962

[19 U.S.C. 1881, P.L. 87–794]

SEC. 251. MOST-FAVORED-NATION PRINCIPLE.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

Section 126(a) of Trade Act of 1974

[19 U.S.C. 2136, P.L. 93–618]

SEC. 126. RECIPROCAL NONDISCRIMINATORY TREATMENT.

(a) Except as otherwise provided in this Act or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title shall apply to products of all foreign countries, whether imported directly or indirectly.

Section 1103(a)(3) of Omnibus Trade and Competitiveness Act of 1988

[19 U.S.C. 2903, P.L. 100–418]

(3) To ensure that a foreign country which receives benefits under a trade agreement entered into under section 1102(b) or (c) is subject to the obligations imposed by such agreement, the President shall recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

2. Communist Countries

General Note 3(b) of Harmonized Tariff Schedule –

Rate of Duty Column 2.

Notwithstanding any of the foregoing provisions of this note, the rates of duty shown in column 2 shall apply to products, whether imported directly of indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, to section 404(a) of the Trade Act of 1974 or to any other applicable section of law, or to action taken by the President thereunder:

Afghanistan
Albania
Bulgaria
Cuba
Czechoslovakia
Estonia
German Democratic Republic
Kampuchea
Laos
Latvia
Lithuania
Mongolia
North Korea
Romania
Union of Soviet Socialist Republics
Vietnam

Title IV of Trade Act of 1974, as amended

[19 U.S.C. 2431, P.L. 93-618, as amended by P.L. 96-39, Reorganization Plan No. 3 of 1979, and P.L. 100-418]

SEC. 401. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive nondiscriminatory treatment (most-favored-nation treatment), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d)(1) If the President determines that the extension of the waiver authority granted by subsection (c)(1) will substantially promote the objectives of this section, he may recommend to the Congress that such authority be extended for a period of 12 months. Any such recommendation shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c)(1) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

(2) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), such authority shall continue in effect with respect to any country for a period of 12 months following the end of the 18-month period referred to in subsection (c)(1), if, before the end of such 18-month period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the date of the adoption of such concurrent resolution. If before the end of such 18-month period, a concurrent resolution approving the extension of such authority is not adopted by the House and the Senate, but both the House and Senate vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries at the end of such 18-month period;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 18-month period.

(3) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 18-month period referred to in subsection (c)(1) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (2) does not apply, such authority shall continue in effect for a period of 60 days following the end of such 18-month period with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2)), and shall continue in effect for a period of 12 months following the end of such 18-month period with respect to any such country if, before the end of such 60-day period, the House of Representatives and the Senate adopt, by an affirmative vote of a majority of the Members present and voting in each House and under the procedures set forth in section 153, a concurrent resolution approving the extension of such authority, and such resolution does not name such country as being excluded from such authority. Such authority shall cease to be effective with respect to any country named in such concurrent resolution on the date of the adoption of such concurrent resolution. If before the end of such 60-day period, a concurrent resolution approving the extension of such authority is not adopted by the House and Senate, but both the House and Senate

vote on the question of final passage of such a concurrent resolution and—

(A) both the House and the Senate fail to pass such a concurrent resolution, the authority granted by subsection (c)(1) shall cease to be effective with respect to all countries on the date of the vote on the question of final passage by the House which votes lasts;

(B) both the House and the Senate pass such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period; or

(C) one House fails to pass such a concurrent resolution and the other House passes such a concurrent resolution which names such country as being excluded from such authority, such authority shall cease to be effective with respect to such country at the end of such 60-day period.

(4) If the President recommends under paragraph (1) the extension of the waiver authority granted by subsection (c)(1), and at the end of the 60-day period referred to in paragraph (3) the House of Representatives and the Senate have not adopted a concurrent resolution approving the extension of such authority and subparagraph (A) of paragraph (3) does not apply, such authority shall continue in effect until the end of the 12-month period following the end of the 18-month period referred to in subsection (c)(1) with respect to any country (except for any country with respect to which such authority was not extended by reason of the application of subparagraph (B) or (C) of paragraph (2) or subparagraph (B) or (C) of paragraph (3)), unless before the end of the 45-day period following such 60-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the precedures set forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 45-day period of a resolution disapproving the extension of such authority with respect to such country.

(5) If the waiver authority granted by subsection (c) has been extended under paragraph (3) or (4) for any country for the 12-month period referred to in such paragraphs, and the President determines that the further extension of such authority will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless before the end of the 60-day period following such previous 12-month extension, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of the Members present and voting in that House and under the procedures set forth in section 153, a resolution disapproving the extension of such authority generally or with respect to such country specifically. Such authority shall cease to be effective with respect to all countries on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority, and shall cease to be effective with respect to any country on the date of the adoption by either House before the end of such 60-day period of a resolution disapproving the extension of such authority with respect to such country.

(e) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 403. UNITED STATES PERSONNEL MISSING IN ACTION IN SOUTHEAST ASIA.

(a) Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and

(3) to return the remains of such personnel who are dead to the United States,

then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive nondiscriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this title between such country and the United States will take effect.

(b) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

SEC. 404. EXTENSION OF NONDISCRIMINATORY TREATMENT.

(a) Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to period during which such country is not in arrears on its obligations under such agreement.

(c) The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States.

SEC. 405. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

(a) Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with re-

spect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after the date of the enactment of the Act, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purpose of this Act.

(c) An agreement referred to in subsection (a), and a proclamation referred to in section 404(a) implementing such agreement, shall take effect only if (1) approved by the Congress by the adoption of a concurrent resolution, referred to in section 151, or (2) in the case of an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, a resolution of disapproval referred to in section 152 is not adopted during the 90-day period specified by section 407(c)(2).

SEC. 406. MARKET DISRUPTION.

[See separate section.]

SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS.

(a) Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c)(1) In the case of a document referred to in subsection (a) (other than a document to which paragraph (2) applies), the proclamation set forth therein may become effective and the agreement set forth therein may enter into force and effect only if the House of Representatives and the Senate adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of approval (under the procedures set forth in section 151) of the extension of nondiscriminatory treatment to the products of the country concerned.

(2) In the case of a document referred to in subsection (a) which sets forth an agreement entered into before the date of the enactment of this Act and a proclamation implementing such agreement, such proclamation may become effective and such agreement may enter into force and effect after the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, unless during such 90-day period either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the extension of nondiscriminatory treatment to the products of the country concerned.

(3) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, either the House of Representatives or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval (under the procedures set forth in section 152) of the report submitted by the President with respect to such country, then, beginning with the day after the date of the adoption of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title.

SEC. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS.

(a) The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.

(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

SEC. 409. FREEDOM TO EMIGRATE TO JOIN A VERY CLOSE RELATIVE IN THE UNITED STATES.

(a) To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

(d) During any period that a waiver is in effect with respect to any nonmarket economy country under section 402(c), the provisions of subsections (a) and (b) shall not apply with respect to such country.

SEC. 410. EAST-WEST TRADE STATISTICS MONITORING SYSTEM.

The International Trade Commission shall establish and maintain a program to monitor imports of articles into the United States from nonmarket economy countries and exports of articles from the United States to nonmarket economy countries. To the extent feasible, the Commission shall coordinate such program with any relevant data gathering programs presently conducted by the Secretary of Commerce. The Secretary of Commerce shall provide the Commission with any information which, in the determination of the Commission, is necessary to carry out this section. The Commission shall publish a detailed summary of the data collected under the East-West Trade Statistics Monitoring System not less frequently than once each calendar quarter and shall transmit such publication to the East-West Foreign Trade Board and to Congress. Such publication shall include data on the effect of such imports if any, on the production of like, or directly competitive, articles in the United States, and on employment within the industry which produces like, or directly competitive, articles in the United States.

[SEC. 411. EAST-WEST FOREIGN TRADE BOARDS.]

[Abolished by section 6 and functions transferred to the President and interagency trade organization by section 5 (c) and (e) of Reorganization Plan No. 3 of 1979.]

D. BILATERAL TRADE WITH ISRAEL

Title IV of Trade and Tariff Act of 1984, as amended

[19 U.S.C. 2112 note, P.L. 98-573, as amended by P.L. 99-47 and P.L. 100-418]

[Sec. 401. Amendment of section 102, Trade Act of 1974, relating to negotiation of trade agreements.]

SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

(a)(1) The reduction or elimination of any duty imposed on any article by the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall apply only if—

(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

(B) that article is imported directly from Israel into the customs territory of the United States; and

(C) the sum of—

(i) the cost of value of the materials produced in Israel, plus

(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

(2) No article may be considered to meet the requirements of paragraph (1)(A) by virtue of having merely undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(b) As used in this section, the phrase "direct costs of processing operations" includes, but is not limited to—

(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(c) Regulations.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) Suspension of Duty-Free Treatment.—The President may by proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(b) ITC Reports.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the "Commission") to the President under section 201(d)(1) of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the proclamation of import relief under section 202(a)(1) of the Trade Act of 1974;

(2) on the day the President makes a determination under section 203(b)(2) of such Act not to impose import relief;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(e) For purposes of this section, the term "perishable product" means any—

(1) live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202, hereinafter referred to as the "HTS"):

(2) vegetables, edible nuts or fruit provided for in chapters 7 and 8, heading 1105, subheadings 1106.10.00 and 1106.30, heading 1202, subheadings 1214.90.00 and 1704.90.60, headings 2001 through 2008 (excluding subheadings 2001.90.20 and 2004.90.10) and subheading 2103.20.40 of the HTS;

(3) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

SEC. 405. CONSTRUCTION OF TITLE.

Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1), nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962, section 337 of title VII of the Tariff Act of 1930, chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974, or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.

United States-Israel Free Trade Area Implementation Act of 1985

[19 U.S.C. 2112, P.L. 99-47]

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Israel Free Trade Area Implementation Act of 1985".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the authority of section 102 of the Trade Act of 1974;

(2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and

(3) to establish free trade between the two nations through the removal of trade barriers.

SEC. 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

Pursuant to section 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves—

(1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as "the Agreement") entered into on April 22, 1985, and submitted to the Congress on April 29, 1985, and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on April 29, 1985.

SEC. 4. PROCLAMATION AUTHORITY.

(a) TARIFF MODIFICATIONS.—Except as provided in subsection (c), the President may proclaim—

(1) such modifications or continuance of any existing duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in annex 1 of the Agreement.

(b) ADDITIONAL TARIFF MODIFICATION AUTHORITY.—Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may proclaim—

(1) such withdrawal, suspension, modification, or continuance of any duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the Agreement.

(c) EXCEPTION TO AUTHORITY.—No modification of any duty imposed on any article provided for in paragraph (4) of annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) UNITED STATES STATUTES TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with—

(1) title IV of the Trade and Tariff Act of 1984, or

(2) any other statute of the United States,

shall be given effect under the laws of the United States.

(b) IMPLEMENTING REGULATIONS.—Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and—

(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States,

unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under, the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement only if—

(A) any reduction of such duty provided in such bill—

(i) takes effect after December 31, 1989, and

(ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

(C) the consultations required under section 3(c)(1) of such Act occur at least ninety days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

(d) Private Remedies Not Created.—Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

SEC. 6. TERMINATION.

The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

[Sec. 7. Amendment of section 308(4) of Trade Agreements Act of 1979 relating to government procurement.]

[Sec. 8. Technical amendments of title IV of Trade and Tariff Act of 1984 and sections 102(b)(3) and Title V of Trade Act of 1974.]

E. BILATERAL TRADE WITH CANADA

United States-Canada Free-Trade Agreement Implementation Act of 1988

[19 U.S.C. 2112 note; P.L. 100-449]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "United States-Canada Free-Trade Agreement Implementation Act of 1988".

(b) Table of Contents.—

Sec. 1. Short title and table of contents.
Sec. 2. Purposes.

TITLE I—APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

Sec. 101. Approval of United States-Canada Free-Trade Agreement.
Sec. 102. Relationship of the agreement to United States law.
Sec. 103. Consultation and lay-over requirements for, and effective date of, proclaimed actions.
Sec. 104. Harmonized System.
Sec. 105. Implementing actions in anticipation of entry into force.

TITLE II—TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

Sec. 201. Tariff modifications.
Sec. 202. Rules of origin.
Sec. 203. Customs user fees.
Sec. 204. Drawback.
Sec. 205. Enforcement.
Sec. 206. Exemption from lottery ticket embargo.
Sec. 207. Production-based duty remission programs with respect to automotive products.

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

Sec. 301. Agriculture.
Sec. 302. Relief from imports.
Sec. 303. Acts identified in national trade estimates.
Sec. 304. Negotiations regarding certain sectors; biennial reports.
Sec. 305. Energy.
Sec. 306. Lowered threshold for Government procurement under Trade Agreements Act of 1979 in the case of certain Canadian products.
Sec. 307. Temporary entry for business persons.
Sec. 308. Amendment to section 5136 of the Revised Statutes.
Sec. 309. Steel products.

TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

Sec. 401. Amendments to section 516A of the Tariff Act of 1930.
Sec. 402. Amendments to title 28, United States Code.
Sec. 403. Conforming amendments to the Tariff Act of 1930.
Sec. 404. Amendments to antidumping and countervailing duty law.
Sec. 405. Organizational and administrative provisions regarding the implementation of chapters 18 and 19 of the Agreement.
Sec. 406. Authorization of appropriations for the Secretariat, the panels, and the committees.

Sec. 407. Testimony and production of papers in extraordinary challenges.
Sec. 408. Requests for review of Canadian antidumping and countervailing duty determinations.
Sec. 409. Subsidies.
Sec. 410. Termination of agreement.

TITLE V—EFFECTIVE DATES AND SEVERABILITY

Sec. 501. Effective dates.
Sec. 502. Severability.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free-Trade Agreement between the United States and Canada negotiated under the authority of section 102 of the Trade Act of 1974;

(2) to strengthen and develop economic relations between the United States and Canada for their mutual benefit;

(3) to establish a free-trade area between the two nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

TITLE I—APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT AND RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW

SEC. 101. APPROVAL OF UNITED STATES-CANADA FREE-TRADE AGREEMENT.

(a) Approval of Agreement and Statement of Administrative Action.—Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves—

(1) the United States-Canada Free-Trade Agreement (hereinafter in this Act referred to as the "Agreement") entered into on January 2, 1988, and submitted to the Congress on July 25, 1988;

(2) the letters exchanged between the Governments of the United States and Canada—

(A) dated January 2, 1988, relating to negotiations regarding articles 301 (Rules of Origin) and 401 (Tariff Elimination) of the Agreement, and

(B) dated January 2, 1988, relating to negotiations regarding article 2008 (Plywood Standards) of the Agreement; and

(3) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 25, 1988.

(b) Conditions for Entry Into Force of the Agreement.—At such time as the President determines that Canada has taken measures necessary to comply with the obligations of the Agreement, the President is authorized to exchange notes with the Government of Canada providing for the entry into force, on or after January 1, 1989, of the Agreement with respect to the United States.

(c) Report on Canadian Practices.—Within 60 days after the date of the enactment of this Act (but not later than December 15, 1988), the United States Trade Representative shall submit to the Congress a report identifying, to the maximum extent practicable, major current Canadian practices (and the legal authority for such practices) that, in the opinion of the United States Trade Representative—

(1) are not in conformity with the Agreement; and

(2) require a change of Canadian law, regulation, policy, or practice to enable Canada to conform with its international obligations under the Agreement.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) UNITED STATES LAWS TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with any law of the United States shall have effect.

(b) RELATIONSHIP OF AGREEMENT TO STATE AND LOCAL LAW.—

(1) The provisions of the Agreement prevail over—

(A) any conflicting State law; and

(B) any conflicting application of any State law to any person or circumstance;

to the extent of the conflict.

(2) Upon the enactment of this Act, the President shall, in accordance with section 306(c)(2)(A) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114c), initiate consultations with the State governments on the implementation of the obligations of the United States under the Agreement. Such consultations shall be held—

(A) through the intergovernmental policy advisory committees on trade established under such section for the purpose of achieving conformity of State laws and practices with the Agreement; and

(B) with the individual States as necessary to deal with particular questions that may arise.

(3) The United States may bring an action challenging any provision of State law, or the application thereof to any person or circumstance, on the ground that the provision or application is inconsistent with the Agreement.

(4) For purposes of this subsection, the term "State law" includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States shall—

(1) have any cause of action or defense under the Agreement or by virtue of congressional approval thereof, or

(2) challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement.

(d) INITIAL IMPLEMENTING REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(3) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

(e) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—The provisions of section 3(c) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)) shall apply as if the Agreement were an agreement approved under section 2(a) of that Act whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation, finding or opinion under, the Agreement; but such provisions shall not apply to any bill to implement any such requirement, amendment, recommendation, finding, or opinion that is submitted to the Congress after the close of the 30th month after the month in which the Agreement enters into force.

SEC. 103. CONSULTATION AND LAY-OVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

(a) CONSULTATION AND LAY-OVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and lay-over requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and

(B) the United States International Trade Commission;

(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor, and

(B) the advice obtained under paragraph (1);

(3) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

(b) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—No action proclaimed by the President under the authority of this Act, if such action is not subject to the consultation and lay-over requirements under subsection (a), may take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

SEC. 104. HARMONIZED SYSTEM.

(a) DEFINITION.—As used in this Act, the term "Harmonized System" means the nomenclature system established under the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on June 14, 1983, and the protocol thereto, done at Brussels on June 24, 1986) as implemented under United States law.

(b) INTERIM APPLICATION OF TSUS.—The following apply if the International Convention, and the protocol thereto, referred to in subsection (a) are not implemented under United States law before the Agreement enters into force:

(1) The President, subject to subsection (c), shall proclaim such modifications to the Tariff Schedules of the United States (19 U.S.C. 1202) as may be necessary to give effect, until such time as such Convention and protocol are so implemented, to the rules of origin, schedule of rate reductions, and other provisions that would, but for the absence of such implementation, be proclaimed under the authority of this Act to, or in terms of, the Harmonized System to implement the obligations of the United States under the Agreement.

(2) Until such time as such Convention and protocol are so implemented, any reference in this Act to the nomenclature of such Convention and protocol shall be treated as a reference to the corresponding nomenclature of the Tariff Schedules of the United States as modified under paragraph (1).

(c) RESTRICTIONS.—

(1) No modification described in subsection (b)(1) that is to take effect concurrently with the entry into force of the Agreement may be proclaimed unless the text of the modification is published in the Federal Register at least 30 days before the date of entry into force.

(2) All modifications proclaimed under the authority of subsection (b)(1) after the Agreement enters into force with respect to the United States are subject to the consultation and layover requirements of section 103(a).

SEC. 105. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE.

Subject to section 103 or 104(c), as appropriate, and any other applicable restriction or limitation in this Act on the proclaiming of actions or the issuing of regulations to carry out this Act or any amendment made by this Act, after the date of the enactment of this Act—

(1) the President may proclaim such actions; and

(2) other appropriate officers of the United States Government may issue such regulations;

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

TITLE II—TARIFF MODIFICATIONS, RULES OF ORIGIN, USER FEES, DRAWBACK, ENFORCEMENT, AND OTHER CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS SPECIFIED IN THE AGREEMENT.—The President may proclaim—

(1) such modifications or continuance of any existing duty;

(2) such continuance of existing duty-free or excise treatment; or

(3) such additional duties;

as the President determines to be necessary or appropriate to carry out article 401 of the Agreement and the schedule of duty reductions with respect to Canada set forth in Annexes 401.2 and 401.7 to the Agreement, as approved under section 101(a)(1). For purposes of proclaiming necessary modifications under such Annex 401.2, any article covered under subheading 9813.00.05 (contained in the United States Schedule in such Annex) shall, unless such article is a drawback eligible good under section 204(a), be treated as being subject to any otherwise applicable customs duty if the article, or merchandise incorporating such article, is exported to Canada.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and lay-over requirements of section 103(a), the President may proclaim—

(1) such modifications as the United States and Canada may agree to regarding the staging of any duty treatment set forth in Annexes 401.2 and 401.7 of the Agreement;

(2) such modifications or continuance of any existing duty;

(3) such continuance of existing duty-free or excise treatment; or

(4) such additional duties;

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada provided for by the Agreement.

(c) MODIFICATIONS AFFECTING PLYWOOD.—

(1) The Congress encourages the President to facilitate the preparation, and the implementation with Canada, of common performance standards for the use of softwood plywood and other structural panels in construction applications in the United States and Canada.

(2) The President shall report to the Congress on the incorporation of common plywood performance standards into building codes in the United States and Canada and may implement the provisions of article 2008 of the Agreement when he determines that the necessary conditions have been met.

(3) Any tariff reduction undertaken pursuant to paragraph (2) shall be in equal annual increments ending January 1, 1998, unless those reductions commence after January 1, 1991.

SEC. 202. RULES OF ORIGIN.

(a) IN GENERAL.—

(1) For purposes of implementing the tariff treatment contemplated under the Agreement, goods originate in the territory of a Party if—

(A) they are wholly obtained or produced in the territory of either Party or both Parties; or

(B) they—

(i) have been transformed in the territory of either Party or both Parties so as to be subject to a change in tariff classification as described in the Annex rules or to such other requirements as the Annex rules may provide when no change in tariff classifications occurs, and

(ii) meet the other conditions set out in the Annex.

(2) A good shall not be considered to originate in the territory of a party under paragraph (1)(B) merely by virtue of having undergone—

(A) simple packaging or, except as expressly provided by the Annex rules, combining operations;

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(C) any process or work in respect of which it is established, or in respect of which the facts as ascertained clearly justify the presumption, that the sole object was to circumvent the provisions of chapter 3 of the Agreement.

(3) Accessories, spare parts, or tools delivered with any piece of equipment, machinery, apparatus, or vehicle that form part of its standard equipment shall be treated as having the same origin as that equipment, machinery, apparatus, or vehicle if the quantities and values of such accessories, spare parts, or tools are customary for the equipment, machinery, apparatus, or vehicle.

(b) TRANSSHIPMENT.—Goods exported from the territory of one Party originate in the territory of that Party only if—

(1) the goods meet the applicable requirements of subsection (a) and are shipped to the territory of the other Party without having entered the commerce of any third country;

(2) the goods, if shipped through the territory of a third country, do not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the territory of the other Party or to preserve them in good condition; and

(3) the documents related to the exportation and shipment of the goods from the territory of a Party show the territory of the other Party as their final destination.

(c) INTERPRETATION.—In interpreting this section, the following apply:

(1) Whenever the processing or assembly of goods in the territory of either Party or both Parties results in one of the changes in tariff classification described in the Annex rules, such goods shall be considered to have been transformed in the territory of that Party and shall be treated as goods originating in the territory of that Party if—

(A) such processing or assembly occurs entirely within the territory of either Party or both Parties; and

(B) such goods have not subsequently undergone any processing or assembly outside the territories of the Parties that improves the goods in condition or advances them in value.

(2) Whenever the assembly of goods in the territory of a Party fails to result in a change of tariff classification because either—

(A) the goods were imported into the territory of the Party in an unassembled or a disassembled form and were classified as unassembled or disassembled goods pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

(B) the tariff subheading for the goods provides for both the goods themselves and their parts;

such goods shall not be treated as goods originating in the territory of a Party.

(3) Notwithstanding paragraph (2), goods described in that paragraph shall be considered to have been transformed in the territory of a Party and be treated as goods originating in the territory of the Party if—

(A) the value of materials originating in the territory of either Party or both Parties used or consumed in the production of the goods plus the direct cost of assembling the goods in the territory of either Party or both Parties constitute not less than 50 percent of the value of the goods when exported to the territory of the other Party; and

(B) the goods have not subsequent to assembly undergone processing or further assembly in a third country and they meet the requirements of subsection (b).

(4) The provisions of paragraph (3) shall not apply to goods of chapters 61–63 of the Harmonized System.

(5) In making the determination required by paragraph (3)(A) and in making the same or a similar determination when required by the Annex rules, where materials originating in the territory of either Party or both Parties and materials obtained or produced in a third country are used or consumed together in the production of goods in the territory of a Party, the value of materials originating in the territory of either Party or both Parties may be treated as such only to the extent that it is directly attributable to the goods under consideration.

(6) In applying the Annex rules, a specific rule shall take precedence over a more general rule.

(d) ANNEX RULES.—

(1) The President is authorized to proclaim, as a part of the Harmonized System, the rules set forth under the heading "Rules" in Annex 301.2 of the Agreement. For purposes of carrying out this paragraph—

(A) the phrase "headings 2207–2209" in paragraph 7 of section IV of such Annex 301.2 shall be treated as a reference to headings 2203–2209; and

(B) the phrase "any other heading" in paragraph 11 of section XV in such Annex 301.2 shall be treated as a reference to any other heading of chapter 74 of the Harmonized System.

(2) Subject to the consultation and lay-over requirements of section 103, the President is authorized to proclaim such modifications to the rules as may from time-to-time be agreed to by the United States and Canada.

(e) AUTOMOTIVE PRODUCTS.—

(1) The President is authorized to proclaim such modifications to the definition of Canadian articles (relating to the administration of the Automotive Products Trade Act of 1965) in

the general notes of the Harmonized System as may be necessary to conform that definition with chapter 3 of the Agreement.

(2) For purposes of administering the value requirement (as defined in section 304(c)(3)) with respect to vehicles, the Secretary of the Treasury shall prescribe regulations governing the averaging of the value content of vehicles of the same class, or of sister vehicles, assembled in the same plant as an alternative to the calculation of the value content of each vehicle.

(f) DEFINITIONS.—For purposes of this section:

(1) The term "Annex" means—

(A) the interpretative guidelines set forth in subsection (c); and

(B) the Annex rules.

(2) The term "Annex rules" means the rules proclaimed under subsection (d).

(3) The term "direct cost of processing or direct cost of assembling" means the costs directly incurred in, or that can reasonably be allocated to, the production of goods, including—

(A) the cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(B) the cost of inspecting and testing the goods;

(C) the cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of a Party;

(D) development, design, and engineering costs;

(E) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of goods; and

(F) royalty, licensing, or other like payments for the right to the goods;

but not including—

(i) costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) brokerage charges relating to the importation and exportation of goods;

(iii) the costs for telephone, mail, and other means of communication;

(iv) packing costs for exporting the goods;

(v) royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; or

(vii) profit on the goods.

(4) The term "goods wholly obtained or produced in the territory of either Party or both Parties" means—

(A) mineral goods extracted in the territory of either Party or both Parties;

(B) goods harvested in the territory of either Party or both Parties;

(C) live animals born and raised in the territory of either Party or both Parties;

(D) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(E) goods produced on board factory ships from the goods referred to in subparagraph (D) provided such factory ships are registered or recorded with that Party and fly its flag;

(F) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that Party has rights to exploit such seabed;

(G) goods taken from space, provided they are obtained by a Party or a person of a Party and not processed in a third country;

(H) waste and scrap derived from manufacturing operations and used goods, provided they were collected in the territory of either Party or both Parties and are fit only for the recovery of raw materials; and

(I) goods produced in the territory of either Party or both Parties exclusively from goods referred to in subparagraphs (A) to (H) inclusive or from their derivatives, at any stage of production.

(5) The term "materials" means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods.

(6) The term "Party" means Canada or the United States.

(7) The term "territory" means—

(A) with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic laws, Canada may exercise rights with respect to the seabed and subsoil and their natural resources; and

(B) with respect to the United States—

(i) the customs territory of the United States, which includes the fifty States, the District of Columbia and the Commonwealth of Puerto Rico,

(ii) the foreign trade zones located in the United States, and the Commonwealth of Puerto Rico, and

(iii) any area beyond the territorial seas of the United States within which, in accordance with international law and its domestic laws, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.

(8) The term "third country" means any country other than Canada or the United States or any territory not a part of the territory of either.

(9) The term "value of materials originating in the territory of either Party or both Parties" means the aggregate of—

(A) the price paid by the producer of an exported good for materials originating in the territory of either Party or both Parties or for materials imported from a third country used or consumed in the production of such originating materials; and

(B) when not included in that price, the following costs related thereto—

(i) freight, insurance, packing, and all other costs incurred in transporting any of the materials referred to in subparagraph (A) to the location of the producer;

(ii) duties, taxes, and brokerage fees on such materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade.

(10) The term "value of the goods when exported to the territory of the other Party" means the aggregate of—

(A) the price paid by the producer for all materials, whether or not the materials originate in either Party or both Parties, and, when not included in the price paid for the materials, the costs related to—

(i) freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) duties, taxes, and brokerage fees on all materials paid in the territory of either Party or both Parties;

(iii) the cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or byproduct; and

(iv) the value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of article 8 of the Agreement on Implementation of article VII of the General Agreement on Tariffs and Trade; and

(B) the direct cost of processing or the direct cost of assembling the goods.

(g) SPECIAL PROVISION REGARDING APPLICATION OF RULES OF ORIGIN TO CERTAIN APPAREL.—The Secretary of Commerce is authorized to issue regulations governing the exportation to Canada of apparel products that are cut, or knit to shape, and sewn, or otherwise assembled, in either Party from fabric produced or obtained in a third country for the purpose of establishing which exports of such products shall be permitted to claim preferential tariff treatment under the rules of origin of the Agreement, to the extent that the Agreement provides for quantitative limits on the availability of preferential tariff treatment for such products.

SEC. 203. CUSTOMS USER FEES.

[Amendment to section 13031(b) of the Consolidated Omnibus Reconciliation Act of 1985 (19 U.S.C. 58c(b)]

SEC. 204. DRAWBACK.

(a) DEFINITION.—For purposes of this section, the term "drawback eligible goods" means—

(1) goods provided for under paragraph 8 of article 404 of the Agreement;

(2) goods provided for under paragraphs 4 and 5 of such article; and

(3) goods other than those referred to in paragraphs (1) and (2) that the United States and Canada agree are not subject to paragraphs 1, 2, and 3 of such article.

No drawback may be paid with respect to countervailing duties or antidumping duties imposed on drawback eligible goods.

(b) IMPLEMENTATION OF ARTICLE 404.—The President is authorized—

(1) to proclaim the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(1); and

(2) subject to the consultation and lay-over requirements of section 103(a), to proclaim—

(A) the identity, in accordance with the nomenclature of the Harmonized System, of goods referred to in subsection (a)(3); and

(B) a delay in the taking effect of article 404 of the Agreement to a date later than January 1, 1994, with respect to any merchandise if the United States and Canada agree to the delay under paragraph 7 of such article.

(c) CONSEQUENTIAL AMENDMENTS.—

(1) BONDED MANUFACTURING WAREHOUSES.—Section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) is amended by adding at the end thereof the following new paragraph:

"No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.".

(2) BONDED SMELTING AND REFINING WAREHOUSES.—Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is further amended—

(A) by inserting after "exportation" in each of paragraphs (1) and (4) of subsection (b) the following: "(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada

Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)"; and

(B) by inserting after "exportation" in subsection (d) the following: "(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)".

[(3) Drawback.—Amendments adding subsections (n) and (o) to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313)]

(4) Manipulation in warehouse.—The second sentence of section 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is amended by striking out the proviso thereto and the colon preceding such proviso and inserting the following: "; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom without payment of duties—

"(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that—

"(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

"(B) is a drawback eligible good under section 204(a) of such Act of 1988;

"(2) for exportation to any foreign country except Canada; and

"(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (1) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.".

[(5) Foreign trade zones.—Amendment to section 3(a) of the Act of June 18, 1934 (commonly known as the "Foreign Trade Zones Act"; 19 U.S.C. 81c)]

SEC. 205. ENFORCEMENT.

(a) Certifications of Origin.—

(1) Any person that certifies in writing that goods exported to Canada meet the rules of origin under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 shall provide, upon request by any customs official, a copy of that certification.

(2) Any person that fails to provide a copy of a certification requested under paragraph (1) shall be liable to the United States for a civil penalty not to exceed $10,000.

(3) Any person that certifies falsely that goods exported to Canada meet the rules of origin under such section 202 shall be liable to the United States for the same civil penalties provided under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) for a violation of section 592(a) of such Act by fraud, gross negligence, or negligence, as the case may be. The procedures and provisions of section 592 of such Act that are applicable to a violation under section 592(a) of such Act shall apply with respect to such false certification.

(b) RECORDKEEPING REQUIREMENTS.—Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(2) by inserting "and (b)" after "(a)" in subsection (c), as so redesignated;

(3) by adding after subsection (a) the following new subsection:

"(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations."; and

(4) by adding at the end thereof the following new subsection:

"(e) Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.".

SEC. 206. EXEMPTION FROM LOTTERY TICKET EMBARGO.

Section 305(a) of the Tariff Act of 1930 (19 U.S.C. 1305(a)) is amended by striking out the period at the end of the first paragraph and inserting the following: ": *Provided further*, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.".

SEC. 207. PRODUCTION-BASED DUTY REMISSION PROGRAMS WITH RESPECT TO AUTOMOTIVE PRODUCTS.

(a) USTR STUDY.—The United States Trade Representative shall—

(1) undertake a study to determine whether any of the production-based duty remission programs of Canada with respect to automotive products is either—

(A) inconsistent with the provisions of, or otherwise denies the benefits to the United States under, the General Agreement on Tariffs and Trade, or

(B) being implemented inconsistently with the obligations under article 1002 of the Agreement not—

(i) to expand the extent or the application, or

(ii) to extend the duration,

of such programs; and

(2) determine whether to initiate an investigation under section 302 of the Trade Act of 1974 with respect to any of such production-based duty remission programs.

(b) REPORT AND MONITORING.—

(1) The United States Trade Representative shall submit a report to Congress no later than June 30, 1989 (or no later than September 30, 1989, if the Trade Representative considers an extension to be necessary) containing—

(A) the results of the study under subsection (a)(1), as well as a description of the basis used for measuring and verifying compliance with the obligations referred to in subsection (a)(1)(B); and

(B) any determination made under subsection (a)(2) and the reasons therefor.

(2) Notwithstanding the submission of the report under paragraph (1), the Trade Representative shall continue to monitor the degree of compliance with the obligations referred to in subsection (a)(1)(B).

TITLE III—APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

SEC. 301. AGRICULTURE.

(a) SPECIAL TARIFF PROVISIONS FOR FRESH FRUITS AND VEGETABLES.—

(1) The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall promptly submit for publication in the Federal Register notice of the determination.

(2) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

(3) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.

(4) A temporary duty imposed under paragraph (3) shall cease to apply with respect to articles that are entered on or after the earlier of—

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

(5) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974.

(6) For purposes of this subsection:

(A) The term "Canadian fresh fruit or vegetable" means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);

(ii) 07.02 (relating to tomatoes, fresh or chilled);

(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

(iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);

(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);

(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);

(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);

(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);

(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);

(x) 08.06.10 (relating to grapes, fresh);

(xi) 08.08.20 (relating to pears and quinces, fresh);

(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and

(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term "corresponding 5-year average monthly import price" for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term "import price" has the meaning given such term in article 711 of the Agreement.

(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of—

(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied.

(7)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.

(8) For purposes of assisting the Secretary in carrying out this subsection, the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables.

(9) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

[(b) MEAT IMPORT ACT OF 1979.—Amendments to the Meat Import Act of 1979 (19 U.S.C. 2253 note)]

[(c) AGRICULTURAL ADJUSTMENT ACT.—Amendment to section 22(f) of the Agricultural Adjustment Act, as reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 624(f))]

(d) IMPORTATION OF ANIMAL VACCINES.—The second sentence of the eighth paragraph of the matter under the heading "BUREAU OF ANIMAL INDUSTRY" of the Act of March 4, 1913 (37 Stat. 832, chapter 145; 21 U.S.C. 152) is amended to read as follows: "The importation into the United States of any virus, serum, toxin, or analogous product for use in the treatment of domestic animals, and the importation of any worthless, contaminated, dangerous, or harmful virus, serum, toxin, or analogous product for use in the treatment of domestic animals, is prohibited without (1) a permit from the Secretary of Agriculture, or (2) in the case of an article originating in Canada, such permit or, in lieu of such permit, such certification by Canada as may be prescribed by the Secretary of Agriculture.".

(e) IMPORTATION OF SEEDS.—Subsection (e) of section 302 of the Federal Seed Act (7 U.S.C. 1582(e)) is amended to read as follows:

"(e) The provisions of this title requiring certain seeds to be stained shall not apply—

"(1) to alfalfa or clover seed originating in Canada, or

"(2) when seeds otherwise required to be stained will not be sold within the United States and will be used for seed production only by or for the importer or consignee and the importer of record or consignee files a statement in accordance with the rules and regulations prescribed under section 402 certifying that such seeds will be used only for seed production by or for the importer or consignee.".

(f) PLANT AND ANIMAL HEALTH REGULATIONS.—

(1) Section 103 of the Federal Plant Pest Act (7 U.S.C. 150bb) is amended—

(A) in subsection (a), by striking out "No" and inserting in lieu thereof "Except as provided in subsection (c), no"; and

(B) by adding at the end thereof the following new subsection:

"(c) No person shall move any plant pest from Canada into or through the United States or accept delivery of any plant pest moving from Canada into or through the United States, unless such movement is made in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.".

(2) Section 104 of the Federal Plant Pest Act (7 U.S.C. 150cc) is amended—

(A) in subsection (a), by striking out "Any letter" and inserting in lieu thereof "Except as provided in subsection (b), any letter";

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following new subsection:

"(b) Any letter, parcel, box, or other package from Canada containing any plant pest, whether sealed as letter-rate postal matter or not, is declared to be nonmailable, and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, except in accordance with such regulations as the Secretary may promulgate under this section to prevent the dissemination into the United States of plant pests.".

(3) The Act of August 20, 1912 (37 Stat. 315, chapter 308; 7 U.S.C. 154 et seq.) is amended—

(A) in the first section (7 U.S.C. 154), by striking out "*Provided*" the first place it appears and inserting in lieu thereof "*Provided*, That the Secretary of Agriculture may waive the permit requirement for nursery stock imported or offered for entry from Canada: *Provided further*"; and

(B) by adding at the end of section 2 (7 U.S.C. 156) the following new sentence: "This section shall not apply to nursery stock that arrives from, or is imported from, Canada.".

(4) Subsection (a) of section 4 of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2803(a)) is amended to read as follows:

"(a) No person shall knowingly move any noxious weed identified in a regulation promulgated by the Secretary into or through the United States or interstate, unless such movement is—

"(1) from Canada, or authorized under general or specific permit from the Secretary; and

"(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may prescribe under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.".

(5) Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306) is amended by inserting after subsection (a) the following new subsection:

"(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if—

"(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and

"(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.".

SEC. 302. RELIEF FROM IMPORTS.

(a) Relief From Imports of Canadian Articles.—

(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United States International Trade Commission (hereafter in this section referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition filed under this paragraph to the United States Trade Representative.

(2)(A) Upon the filing of a petition under paragraph (1), the Commission shall promptly initiate an investigation to determine whether, as a result of a reduction or elimination of a duty provided for under the United States-Canada Free-Trade Agreement, an article originating in Canada is being imported into the United States in such increased quantities, in absolute terms, and under such conditions, so that imports of such Canadian article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article like, or directly competitive with, the imported article.

(B) The provisions of—

(i) paragraphs (2), (3), (4), (6), and (7) of subsection (b), other than paragraph (2)(B), and

(ii) subsection (c),

of section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as in effect on June 1, 1988, shall apply with respect to any investigation initiated under subparagraph (A).

(C) By no later than the date that is 120 days after the date on which an investigation is initiated under subparagraph (A), the Commission shall make a determination under subparagraph (A) with respect to such investigation.

(D) If the determination made by the Commission under subparagraph (A) with respect to imports of an article is affirmative, the Commission shall find and recommend to the President the amount of import relief that is necessary to remedy the injury found by the Commission in such affirmative determination, which shall be limited to that set forth in paragraph (3)(C).

(E)(i) By no later than the date that is 30 days after the date on which a determination is made under subparagraph (A) with respect to an investigation, the Commission shall submit to the President a report on the determination and the basis for the determination. The report shall include any dissenting or separate views and a transcript of the hearings and any briefs which were submitted to the Commission in the course of the investigation initiated under subparagraph (A).

(ii) Any finding made under subparagraph (D) shall be included in the report submitted to the President under clause (i).

(F) Upon submitting a report to the President under subparagraph (E), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(G) For purposes of this subsection—

(i) The provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this paragraph as if such determinations and findings were made under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

(ii) The determination of whether an article originates in Canada shall be made in accordance with section 202 (including any proclamations issued under section 202).

(3)(A) By no later than the date that is 30 days after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

(C) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to—

(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

(ii) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of—

(I) the most-favored-nation rate of duty that is imposed by the United States on such article from any other foreign country at the time such import relief is provided, or

(II) the most-favored-nation rate of duty that is imposed by the United States on such article from any other foreign country on the day before the date on which the Agreement enters into force, or

(iii) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the most-favored-nation rate of duty imposed by the United States on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

(4)(A) No investigation may be initiated under paragraph (2)(A) with respect to any article for which import relief has been provided under this subsection.

(B) No import relief may be provided under this subsection after the date that is 10 years after the date on which the Agreement enters into force.

(5) For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under paragraph (3) shall be treated as action taken under chapter I of title II of such Act.

(b) Relief From Imports From All Countries.—

(1)(A) If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which is treated as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission shall also find (and report to the President at the time such injury determination is submitted to the President), whether imports from Canada of the article that is the subject of such investigation are substantial and are contributing importantly to such injury or threat thereof.

(B)(i) In determining under subparagraph (A) whether imports of an article from Canada are substantial, the Commission shall not normally consider imports from Canada in the range of 5 to 10 percent or less of total imports of such article to be substantial.

(ii) For purposes of this paragraph, the term "contributing importantly" means an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports.

(2)(A) In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 with respect to imports from Canada, the President shall determine whether imports from Canada of such article are substantial and contributing importantly to the serious injury or threat of serious injury found by the Commission.

(B) In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from Canada if the President has made a negative determination under subparagraph (A) regarding imports from Canada.

(3)(A) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, the President may, if the President thereafter determines that a surge in imports from Canada of the article that is the subject of the action is undermining the effectiveness of the action, take appropriate action under such chapter with respect to such imports from Canada to include such imports in such action.

(B)(i) If, under paragraph (2)(B), the President excludes imports from Canada from action taken under chapter 1 of title II of the Trade Act of 1974, any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry for which such action is being taken under such chapter may request the Commission to conduct an investigation of imports from Canada of the article that is the subject of such action.

(ii) Upon receiving a request under clause (i), the Commission shall conduct an investigation to determine whether a surge in imports from Canada of the article that is the subject of action being taken under chapter 1 of title II of the Trade Act of 1974 undermines the effectiveness of such action. The Commission shall submit the findings of such investigation to the President by no later than the date that is 30 days after the date on which such request is received by the Commission.

(C) For purposes of this paragraph, the term "surge" means a significant increase in imports over the trend for a reasonable, recent base period for which data are available.

(c) Any entity that is representative of an industry may submit a petition for relief under subsection (a), under chapter 1 of title II of the Trade Act of 1974, or under both subsection (a) and such chapter at the same time. If petitions are submitted by such an entity under subsection (a) and such chapter at the same time, the Commission shall consider such petitions jointly.

SEC. 303. ACTS IDENTIFIED IN NATIONAL TRADE ESTIMATES.

With respect to any act, policy, or practice of Canada that is identified in the annual report submitted under section 181 of the Trade Act of 1974 (19 U.S.C. 2241), the United States Trade Representative shall include—

(1) information with respect to the action taken regarding such act, policy, or practice, including but not limited to—

(A) any action under section 301 of the Trade Act of 1974 (including resolution through appropriate dispute settlement procedures),

(B) any action under section 307 of the Trade and Tariff Act of 1984, and

(C) negotiations or consultations, whether on a bilateral or multilateral basis; or

(2) the reasons that no action was taken regarding such act, policy, or practice.

SEC. 304. NEGOTIATIONS REGARDING CERTAIN SECTORS; BIENNIAL REPORTS.

(a) In General.—

(1) The President is authorized to enter into negotiations with the Government of Canada for the purpose of concluding an agreement (including an agreement amending the Agreement) or agreements to—

(A) liberalize trade in services in accordance with article 1405 of the Agreement;

(B) liberalize investment rules;

(C) improve the protection of intellectual property rights;

(D) increase the value requirement applied for purposes of determining whether an automotive product is treated as originating in Canada or the United States; and

(E) liberalize government procurement practices, particularly with regard to telecommunications.

(2) As an exercise of the foreign relations powers of the President under the Constitution, the President will enter into immediate consultations with the Government of Canada to obtain the exclusion from the transport rates established under Canada's Western Grain Transportation Act of agricultural goods that originate in Canada and are shipped via east coast ports for consumption in the United States.

(b) Negotiating Objectives Regarding Services, Investment, and Intellectual Property Rights.—

(1) The objectives of the United States in negotiations conducted under subsection (a)(1)(A) to liberalize trade in services include—

(A) with respect to developing services sectors not covered in the Agreement, the elimination of those tariff, nontariff, and subsidy trade distortions that have potential to affect significant bilateral trade;

(B) the elimination or reduction of measures grandfathered by the Agreement that deny or restrict national treatment in the provision of services;

(C) the elimination of local presence requirements; and

(D) the liberalization of government procurement of services.

In conducting such negotiations, the President shall consult with the services advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(2) The objectives of the United States in any negotiations conducted under subsection (a)(1)(B) to liberalize investment rules include—

(A) the elimination of direct investment screening;

(B) the extension of the principles of the Agreement to energy and cultural industries, to the extent such industries are not currently covered by the Agreement;

(C) the elimination of technology transfer requirements and other performance requirements not currently barred by the Agreement; and

(D) the subjection of all investment disputes to dispute resolution under chapter 18 of the Agreement.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in investment.

(3) The objectives of the United States in any negotiations conducted under subsection (a)(1)(C) to improve the protection of intellectual property rights include—

(A) the recognition and adequate protection of intellectual property, including copyrights, patents, process patents, trademarks, mask works, and trade secrets; and

(B) the establishment of dispute resolution procedures and binational enforcement of intellectual property standards.

In conducting such negotiations, the President shall consult with persons representing diverse interests in the United States in intellectual property.

(c) NEGOTIATING OBJECTIVES REGARDING AUTOMOTIVE PRODUCTS.—

(1) In conducting negotiations under subsection (a)(1)(D) regarding the value requirement for automotive products, the President shall seek to conclude an agreement by no later than January 1, 1990, to increase the value requirement from 50 percent to at least 60 percent.

(2) The President is authorized, through January 1, 1999, to proclaim any agreed increase in the value requirement.

(3) As used in this section, the term "value requirement" means the minimum percentage of the value of an automotive product that must be accounted for by the value of the materials in the product that originated in the United States or Canada, or both, plus the direct cost of processing or assembly performed in the United States or Canada, or both, with respect to the product.

(d) NEGOTIATION OF LIMITATION ON POTATO TRADE.—

(1) During the 5-year period beginning on the date of enactment of this Act, the President is authorized to enter into negotiations with Canada for the purpose of obtaining an agreement to limit the exportation and importation of all potatoes between the United States and Canada, including seed potatoes, fresh, chilled or frozen potatoes, dried, desiccated or dehydrated potatoes, and potatoes otherwise prepared or preserved. Any agreement negotiated under this subsection shall provide for an annual limitation divided equally into each half of the year.

(2) For the purpose of conducting negotiations under paragraph (1), the Secretary of Agriculture and the United States Trade Representative shall consult with representatives of the potato producing industry, including the Ad Hoc Potato Advisory Group and the United States/Canada Horticultural Industry Advisory Committee, to solicit their views on negotiations with Canada for reciprocal quantitative limits on the potato trade.

(3) The President is authorized to direct the Secretary of the Treasury to—

(A) carry out such actions as may be necessary or appropriate to ensure the attainment of the objectives of any agreement that is entered into under this section; and

(B) enforce any quantitative limitation, restriction, and other terms contained in the agreement.

Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of any article that is subject to the agreement.

(4) The provisions of section 1204 of the Agriculture and Food Act of 1981 (7 U.S.C. 1736j) and the last sentence of section 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3) shall not apply in the case of actions taken pursuant to this subsection.

(e) CANADIAN CONTROLS ON FISH.—

(1) Within 30 days of the application by Canada of export controls on unprocessed fish under statutes exempted from the Agreement under article 1203, or the application of landing requirements for fish caught in Canadian waters, the President shall take appropriate action to enforce United States rights under the General Agreement on Tariffs and Trade that are retained in article 1205 of the Agreement.

(2) In enforcing the United States rights referred to in paragraph (1), the President has discretion to—

(A) bring a challenge to the offending Canadian practices before the GATT;

(B) retaliate against such offending practices;

(C) seek resolution directly with Canada;

(D) refer the matter for dispute resolution to the Canada-United States Trade Commission; or

(E) take other action that the President considers appropriate to enforce such United States rights.

(f) BIENNIAL REPORT.—The President shall submit to the Congress, at the close of each biennial period occurring after the date on which the Agreement enters into force, a report regarding—

(1) the status of the negotiations regarding agreements that the President is authorized to enter into with Canada under this section;

(2) the effectiveness and operation of any agreement entered into under section 304 that is in force with respect to the United States;

(3) the effectiveness of operation of the Agreement generally; and

(4) the actions taken by the United States and Canada to implement further the objectives of the Agreement.

SEC. 305. ENERGY.

[(a) ALASKAN OIL.—Amendment to section 7(d)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(d)(1))]

(b) URANIUM.—Section 161(v) of the Atomic Energy Act of 1954 (42 U.S.C. 2201(v)) is amended by inserting "For purposes of this subsection and of section 305 of Public Law 99–591 (100 Stat. 3341-209, 210), 'foreign origin' excludes source or special nuclear material originating in Canada." before "The Commission shall establish".

[SEC. 306. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN CANADIAN PRODUCTS.

[Amendment adding subparagraph (D) to section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4))]

SEC. 307. TEMPORARY ENTRY FOR BUSINESS PERSONS.

(a) NONIMMIGRANT TRADERS AND INVESTORS.—Upon a basis of reciprocity secured by the United States-Canada Free-Trade Agreement, a citizen of Canada, and the spouse and children of any such citizen if accompanying or following to join such citizen, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Annex 1502.1 (United States of America), Part B—Traders and Investors, of such Agreement, but only if any such purpose shall have been specified in such Annex as of the date of entry into force of such Agreement.

(b) NONIMMIGRANT PROFESSIONALS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.".

SEC. 308. AMENDMENT TO SECTION 5136 OF THE REVISED STATUTES.

Paragraph "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by adding at the end thereof the following:

"A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

"(1) the term 'qualified Canadian government obligations' means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

"(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

"(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

"(2) the term 'Province of Canada' means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.".

SEC. 309. STEEL PRODUCTS.

Nothing in this Act shall preclude any discussion or negotiation between the United States and Canada in order to conclude voluntary restraint agreements or mutually agreed quantitative restrictions on the volume of steel products entering the United States from Canada.

TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES.

[SEC. 401. AMENDMENTS TO SECTION 516A OF THE TARIFF ACT OF 1930.

[Amendments to section 516A of the Tariff Act of 1930 (19 U.S.C. 1516A) to establish procedures for binational panel review of certain antidumping and countervailing duty determinations]

SEC. 402. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) JURISDICTION OF COURT OF INTERNATIONAL TRADE.—Section 1581(i) of title 28, United States Code, is amended by adding at the end thereof the following flush sentence: "This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the United States-Canada

Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.".

(b) **Relief in Court of International Trade.**—Section 2643(c) of title 28, United States Code, is amended—

(1) by striking out "and (4)" in paragraph (1) and inserting in lieu thereof "(4), and (5)"; and

(2) by adding at the end thereof the following new paragraph:

"(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority, the Court of International Trade may not order declaratory relief.".

(c) **Declaratory Judgments.**—Subsection (a) of section 2201 of title 28, United States Code, is amended—

(1) by striking out "1954 or" and inserting in lieu thereof "1986,"; and

(2) by inserting "or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority," after "of title 11,".

(d) **Actions Under the Agreement.**—

(1) Chapter 95 of title 28, United States Code, is amended by inserting after section 1583 the following new section:

"§ 1584. Civil actions under the United States-Canada Free-Trade Agreement

"The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section 777(d) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.".

(2) The table of contents for chapter 95 of title 28, United States Code, is amended by inserting after the item relating to section 1583 the following new item:

"1584. Civil actions under the United States-Canada Free-Trade Agreement.".

SEC. 403. CONFORMING AMENDMENTS TO THE TARIFF ACT OF 1930.

(a) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)) is amended by striking out all after "recommending the same," and inserting in lieu thereof "a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.".

(b) Section 514(b) of the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended by inserting ", or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the United States-Canada Free-Trade Agreement" after "International Trade".

⟦(c) Amendments to section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f) adding subsection (d) concerning disclosure of proprietary information under protective orders⟧

⟦(d) Amendment to section 771 of the Tariff Act of 1930 (19 U.S.C. 1677)⟧

SEC. 404. AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW.

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to—

(1) section 303 or title VII of the Tariff Act of 1930, or any successor statute, or

(2) any other statute which—

(A) provides for judicial review of final determinations under such section, title, or statute, or

(B) indicates the standard of review to be applied,

shall apply to Canada only to the extent specified in such amendment.

SEC. 405. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTERS 18 AND 19 OF THE AGREEMENT.

(a) Appointment of Individuals to Panels and Committees.—

(1)(A) There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall—

(i) be chaired by the United States Trade Representative (hereafter in this section referred to as the "Trade Representative"), and

(ii) consist of such officers (or the designees thereof) of the Government of the United States as the Trade Representative considers appropriate.

(B) The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19 of the Agreement—

(i) prepare by January 3 of each calendar year—

(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19 of the Agreement, and

(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under such chapter,

(ii) if the Trade Representative makes a request under paragraph (5)(A)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list,

(iii) exercise oversight of the administration of the United States Secretariat that is authorized to be established under subsection (e), and

(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the Agreement.

(2)(A) The Trade Representative shall select individuals from the respective lists prepared by the interagency group under paragraph (1)(B)(i) for placement on a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2 of the Agreement and a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 of the Agreement.

(B) The selection of individuals for—

(i) placement on lists prepared by the interagency group under clause (i) or (ii) of paragraph (1)(B),

(ii) placement on preliminary candidate lists under subparagraph (A),

(iii) placement on final candidate lists under paragraph (3),

(iv) placement by the Trade Representative on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, and

(v) appointment by the Trade Representative for service on binational panels and extraordinary challenge committees convened under chapter 19 of the Agreement,

shall be made on the basis of the criteria provided in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement and shall be made without regard to political affiliation.

(C) For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (1) or the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subparagraph (B), shall be treated as matters within the jurisdiction of an agency of the United States.

(3)(A) By no later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "appropriate Congressional Committees") the preliminary candidate lists of those individuals selected by the Trade Representative under paragraph (2)(A) to be candidates eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year.

(B) Upon submission of the preliminary candidate lists under subparagraph (A) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals listed on the preliminary candidate lists.

(C) The Trade Representative may add or delete individuals from the preliminary candidate lists submitted under subparagraph (A) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists.

(4)(A) By no later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to the appropriate Congressional Committees under this subparagraph.

(B) Except as provided in paragraph (5), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).

(5)(A) If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under paragraph (4)(A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall—

(i) request the interagency group established under paragraph (1)(A) to prepare a list of individuals who are qualified to be added to such candidate list,

(ii) select individuals from the list prepared by the interagency group under paragraph (1)(B)(ii) to be included in a proposed amendment to such final candidate list, and

(iii) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under clause (ii).

(B) Upon submission of a proposed amendment under subparagraph (A)(iii) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.

(C) The Trade Representative may add or delete individuals from any proposed amendment submitted under subparagraph (A)(iii) after consulting the appropriate Congressional Committees with regard to such addition or deletion. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.

(D)(i) If the Trade Representative submits under subparagraph (A)(iii) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, by no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and the individuals included in the final form of such amendment shall be added to the final candidate list.

(ii) An individual may be included in the final form of an amendment submitted under clause (i) only if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted under clause (i).

(iii) Individuals added to a final candidate list under clause (i) shall be eligible to serve on binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement, as the case may be, during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.

(iv) No additions may be made to the final form of an amendment described in clause (i) after the final form of such amendment is submitted to the appropriate Congressional Committees under clause (i).

(6)(A) The Trade Representative is the only officer of the Government of the United States authorized to act on behalf of the Government of the United States in making any selection or appointment of an individual to—

(i) the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) the binational panels or extraordinary challenge committees convened pursuant to chapter 19 of the Agreement,

that is to be made solely or jointly by the Government of the United States under the terms of the Agreement.

(B) Except as otherwise provided in paragraph (7)(B), the Trade Representative may—

(i) select an individual for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 1-year period beginning on April 1 of any calendar year,

(ii) appoint an individual to serve as one of those members of any binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the Government of the United States, or

(iii) act to make a joint appointment with the Government of Canada, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee,

only if such individual is on the appropriate final candidate list that was submitted to the appropriate Congressional Committees under paragraph (4)(A) during such calendar year or on such list as it may be amended under paragraph (5)(D)(i).

(7)(A) Except as otherwise provided in this paragraph, no individual may—

(i) be selected by the Government of the United States for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement, or

(ii) be appointed solely or jointly by the Government of the United States to serve as a member of a binational panel or extraordinary challenge committee convened pursuant to chapter 19 of the Agreement,

during the 1-year period beginning on April 1 of any calendar year for which the Trade Representative has not met the requirements of this subsection.

(B)(i) Notwithstanding paragraphs (3), (4), or (6)(B) (other than paragraph (3)(A)), individuals listed on the preliminary candidate lists submitted to the appropriate Congressional Committees under paragraph (3)(A) may—

(I) be selected by the Trade Representative for placement on the rosters described in Annex 1901.2(1) and Annex 1904.13(1) of the Agreement during the 3-month period beginning on the date on which the Agreement enters into force, and

(II) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of binational panels or extraordinary challenge committees that are convened pursuant to chapter 19 of the Agreement during such 3-month period.

(ii) If the Agreement enters into force after January 3, 1989, the provisions of this subsection shall be applied with respect to the calendar year in which the Agreement enters into force—

(I) by substituting "the date that is 30 days after the date on which the Agreement enters into force" for "January 3 of each calendar year" in paragraphs (1)(B)(i) and (3)(A), and

(II) by substituting "the date that is 3 months after the date on which the Agreement enters into force" for "March 31 of each calendar year" in paragraph (4)(A).

(b) STATUS OF PANELISTS.—Notwithstanding any other provision of law, individuals appointed by the United States to serve on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist such appointed individuals, shall not be considered to be employees or special employees of, or to be otherwise affiliated with, the Government of the United States.

(c) IMMUNITY OF PANELISTS.—With the exception of acts described in section 777f(d)(3) of the Tariff Act of 1930, as added by this Act, individuals serving on panels or committees convened pursuant to chapter 19 of the Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.

(d) REGULATIONS.—The administering authority under title VII of the Tariff Act of 1930, the United States International Trade Commission, and the United States Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapters 18 and 19 of the Agreement. Initial regulations to carry out such functions shall be issued prior to the date of entry into force of the Agreement.

(e) ESTABLISHMENT OF UNITED STATES SECRETARIAT.—

(1) The President is authorized to establish within any department or agency of the Federal Government a United States Secretariat which, subject to the oversight of the inter-

agency group established under subsection (a)(1)(A), shall facilitate—

(A) the operation of chapters 18 and 19 of the Agreement, and

(B) the work of the binational panels and extraordinary challenge committees convened under chapters 18 and 19 of the Agreement.

(2) The United States Secretariat established by the President under paragraph (1) shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS FOR THE SECRETARIAT, THE PANELS, AND THE COMMITTEES.

(a) THE SECRETARIAT.—There are authorized to be appropriated to the department or agency within which the United States Secretariat described in chapter 19 of the Agreement is established the lesser of—

(1) such sums as may be necessary, or

(2) $5,000,000,

for each fiscal year succeeding fiscal year 1988 for the establishment and operations of such United States Secretariat and for the payment of the United States share of the expenses of the dispute settlement proceedings under chapter 18 of the Agreement.

(b) PANELS AND COMMITTEES.—

(1) There are authorized to be appropriated to the Office of the United States Trade Representative for fiscal year 1989 such sums as may be necessary to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

(2) The United States Trade Representative is authorized to transfer funds appropriated pursuant to the authorization provided under paragraph (1) to any department or agency of the United States in order to facilitate payment of the expenses described in paragraph (1).

(3) Funds appropriated for the payment of expenses described in paragraph (1) during any fiscal year may be expended only to the extent such funds do not exceed the amount authorized to be appropriated under paragraph (1) for such fiscal year. This paragraph shall apply, notwithstanding any law enacted after the date of enactment of this Act, unless such subsequent law specifically provides that this paragraph shall not apply and specifically cites this paragraph.

SEC. 407. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES.

(a) AUTHORITY OF EXTRAORDINARY CHALLENGE COMMITTEE TO OBTAIN INFORMATION.—If an extraordinary challenge committee (hereinafter referred to in this section as the "committee") is convened pursuant to article 1904(13) of the Agreement, and the allegations before the committee include a matter referred to in article 1904(13)(a)(i) of the Agreement, for the purposes of carrying out its functions and duties under Annex 1904.13 of the Agreement, the committee—

(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity,

(2) may summon witnesses, take testimony, and administer oaths,

(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question, and

(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

Any member of the committee may sign subpoenas, and members of the committee, when authorized by the committee, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.—Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.

(d) DEPOSITIONS.—The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

SEC. 408. REQUESTS FOR REVIEW OF CANADIAN ANTIDUMPING AND COUNTERVAILING DUTY DETERMINATIONS.

(a) REQUESTS FOR REVIEW BY THE UNITED STATES.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, requests by the United States for binational panel review under article 1904 of the Agreement shall be made by the United States Secretary, described in article 1909(4) of the Agreement.

(b) Requests for Review by a Person.—In the case of a final antidumping or countervailing duty determination of a competent investigating authority of Canada, as defined in article 1911 of the Agreement, a person, within the meaning of article 1904(5) of the Agreement, may request a binational panel review of such determination by filing with the United States Secretary, described in article 1909(4) of the Agreement, such a request within the time limit provided for in article 1904(4) of the Agreement. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority shall prescribe by regulations. The request for such panel review shall not preclude the United States, Canada, or any other person from challenging before a binational panel the basis for a particular request for review.

(c) Service of Request for Review.—Whenever binational panel review is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would be regarded as interested parties to the proceeding if the determination in question had been made under title VII of the Tariff Act of 1930.

SEC. 409. SUBSIDIES.

(a) Negotiating Authority.—

(1) The President is authorized to enter into an agreement with Canada, including an agreement to amend the Agreement, on rules applicable to trade between the United States and Canada that—

(A) deal with unfair pricing and government subsidization, and

(B) provide for increased discipline on subsidies.

(2)(A) The objectives of the United States in negotiating an agreement under paragraph (1) include (but are not limited to)—

(i) achievement, on an expedited basis, of increased discipline on government production and export subsidies that have a significant impact, directly or indirectly, on bilateral trade between the United States and Canada; and

(ii) attainment of increased and more effective discipline on those Canadian Government (including provincial) subsidies having the most significant adverse impact on United States producers that compete with subsidized products of Canada in the markets of the United States and Canada.

(B) Special emphasis should be given in negotiating an agreement under paragraph (1) to obtain discipline on Canadian subsidy programs that adversely affect United States industries which directly compete with subsidized imports.

(3) The United States members of the working group established under article 1907 of the Agreement shall—

(A) consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) regarding—

(i) the issues being considered by the working group, and

(ii) as appropriate, the objectives and strategy of the United States in the negotiations, and

(B) beginning in January 1990, submit an annual report to such Congressional Committees on the progress being made in the negotiations to obtain an agreement that meets the objectives described in paragraph (2).

(4) Notwithstanding any other provision of this Act or of any other law, the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) shall not apply to any bill or joint resolution that implements an agreement entered into under paragraph (1), unless the President determines and notifies the Congress that such agreement—

(A) will provide greater discipline over government subsidies and no less discipline over unfair pricing practices by producers than that provided by the agreements described in paragraphs (5) and (6) of section 2 of the Trade Agreements Act of 1979 (the Subsidies Code and Antidumping Code), respectively, taking into account the effects of the Agreement, and

(B) will neither undermine such multilateral discipline nor detract from United States efforts to increase such discipline on a multilateral basis in, or subsequent to, the Uruguay Round of multilateral trade negotiations.

(b) Identification of Industries Facing Subsidized Imports.—

(1) Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe that—

(A)(i) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized Canadian imports with which it directly competes; or

(ii) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefitting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force after January 1, 1989; and

(B) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to such country;

may file a petition with the United States Trade Representative (hereafter referred to in this section as the "Trade Representative") to be identified under this section.

(2) Within 90 days of receipt of a petition under paragraph (1), the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in paragraph (1)(A) and the deterioration described in paragraph (1)(B).

(3) At the request of an entity that is representative of an industry identified under paragraph (2), the Trade Representative shall—

(A) compile and make available to the industry information under section 305 of the Trade Act of 1974,

(B) recommend to the President that an investigation by the United States International Trade Commission be requested under section 332 of the Tariff Act of 1930, or

(C) take actions described in both subparagraphs (A) and (B).

The industry may request the Trade Representative to take appropriate action to update (as often as annually) any information obtained under subparagraph (A) or (B), or both, as the case may be, until an agreement on adequate rules and disciplines relating to government subsidies is reached.

(4)(A) The Trade Representative and the Secretary of Commerce shall review information obtained under paragraph (3) and consult with the industry identified under paragraph (2) with a view to deciding whether any action is appropriate under section 301 of the Trade Act of 1974, including the initiation of an investigation under section 302(c) of that Act (in the case of the Trade Representative), or under subtitle A of title VII of the Tariff Act of 1930, including the initiation of an investigation under section 702(a) of that Act (in the case of the Secretary of Commerce).

(B) In determining whether to initiate any investigation under section 301 of the Trade Act of 1974 or any other trade law, other than title VII of the Tariff Act of 1930, the Trade Representative, after consultation with the Secretary of Commerce—

(i) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;

(ii) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;

(iii) shall coordinate with the interagency committee established under section 242 of the Trade Expansion Act of 1962; and

(iv) may ask the President to request advice from the United States International Trade Commission.

(C) In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 as a result of a review under this paragraph and the President, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 301(a) of such Act, the President shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the President otherwise determines that application of the action to other products would be more effective.

(5) Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way—

(A) prejudice the right of any industry to file a petition under any trade law,

(B) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the United States International Trade Commission, or the Trade Representative pursuant to such a petition,

(C) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974, title VII of the Tariff Act of 1930, or any other trade law.

(6) Nothing in this subsection may be construed to alter in any manner the requirements in effect before the enactment of this Act for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

SEC. 410. TERMINATION OF AGREEMENT.

(a) In General.—If—

(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force, and

(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement,

the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States.

(b) Transition Provisions.—

(1) If on the date on which the Agreement should cease to be in force an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(d) of the Tariff Act of 1930 (as amended by this Act) or a Canadian undertaking is pending, such investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with the provisions of such section.

(2) If on the date on which the Agreement should cease to be in force a binational panel review under article 1904 of the Agreement is pending, or has been requested, with respect to a determination to which section 516A(g)(2) of the Tariff Act of 1930 (as added by this Act) applies, such determination shall be reviewable under section 516A(a) of the Tariff Act of 1930. In the case of a determination to which the provisions of this paragraph apply, the time limits for commencing an action under section 516A(a)(2)(A) of the Tariff Act of 1930 shall not

begin to run until the date on which the Agreement ceases to be in force.

TITLE V—EFFECTIVE DATES AND SEVERABILITY

SEC. 501. EFFECTIVE DATES.

(a) In General.—Except as provided in subsection (b), the provisions of this Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act.

(b) Exceptions.—Sections 1 and 2, title I, section 304 (except subsection (f)), section 309, this section and section 502 shall take effect on the date of enactment of this Act.

(c) Termination of Provisions and Amendments if Agreement Terminates.—On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection and section 410(b)), and the amendments made by this Act, shall cease to have effect.

SEC. 502. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application of such a provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Automotive Products Trade Act of 1965, as amended

[19 U.S.C. 2001; P.L. 89-283 as amended by P.L. 100-418]

TITLE I—SHORT TITLE AND PURPOSES

SHORT TITLE

Section 101. This Act may be cited as the "Automotive Products Trade Act of 1965."

PURPOSES

Sec. 102. The purposes of this Act are—

(1) to provide for the implementation of the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada signed on January 16, 1965 (hereinafter referred to as the "Agreement"), in order to strengthen the economic relations and expand trade in automotive products between the United States and Canada; and

(2) to authorize the implementation of such other international agreements providing for the mutual reduction or elimination of duties applicable to automotive products as the Government of the United States may hereafter enter into.

TITLE II—BASIC AUTHORITIES

IMPLEMENTATION OF THE AGREEMENT

SEC. 201. (a) The President is authorized to proclaim the modifications of the Harmonized Tariff Schedule of the United States provided for in title IV of this Act.

(b) At any time after the issuance of the proclamation authorized by subsection (a), the President is authorized to proclaim further modifications of the Harmonized Tariff Schedule of the United States to provide for the duty-free treatment of any Canadian article which is original motor-vehicle equipment (as defined by such Schedules as modified pursuant to subsection (a)) if he determines that the importation of such article, is actually or potentially of commercial significance and that such duty-free treatment is required to carry out the Agreement.

IMPLEMENTATION OF OTHER AGREEMENTS

SEC. 202. (a) Whenever, after determining that such an agreement will afford mutual trade benefits, the President enters into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products of their respective countries which are motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such agreement.

(b) Whenever, after having entered into an agreement with the government of a country providing for the mutual elimination of the duties applicable to products described in subsection (a), the President, after determining that such further agreement will afford mutual trade benefits, enters into a further agreement with such government providing for the mutual reduction or elimination of the duties applicable to automotive products other than motor vehicles and fabricated components intended for use as original equipment in the manufacture of such vehicles, the President (in accordance with subsection (d)) is authorized to proclaim such modifications of the Tariff Schedules of the United States as he determines to be required to carry out such further agreement.

(c) Before the President enters into the negotiation of an agreement referred to in subsection (a) or (b), he shall—

(1) seek the advice of the Tariff Commission as to the probable economic effect of the reduction or elimination of duties on industries producing articles like or directly competitive with those which may be covered by such agreement;

(2) give reasonable public notice of his intention to negotiate such agreement (which notice shall be published in the Federal Register) in order that any interested person may have an opportunity to present his views to such agency as the President may prescribe; and

(3) seek information and advice with respect to such agreement from the Department of Commerce, Labor, State, and the

Treasury, and from such other sources as he may deem appropriate.

(d)(1) The President shall transmit to each House of the Congress a copy of each agreement referred to in subsection (a) or (b). The delivery to both Houses shall be on the same day and shall be made to each House while it is in session.

(2) The President is authorized to issue any proclamation to carry out any such agreement—

(A) only after the expiration of the 60-day period following the date of delivery,

(B) only if, between the date of delivery and the expiration of such 60-day period, the Congress has not adopted a concurrent resolution stating in substance that the Senate and House of Representatives disapprove of the agreement, and

(C) in the case of any agreement referred to in subsection (b) with any country only if there is in effect a proclamation implementing an agreement with such country applicable to products described in subsection (a).

(3) For purposes of paragraph (2) in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die.

(e) This section shall cause to be in effect on the day after the date of the enactment of this Act.

EFFECTIVE DATE OF PROCLAMATIONS

SEC. 203. (a) Subject to subsection (b), the President is authorized, notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C., sec. 1514) or any other provision of law, to give retroactive effect to any proclamation issued pursuant to section 201 of this Act as of the earliest date after January 17, 1965, which he determines to be practicable.

(b) In the case of liquidated customs entries, the retroactive effect pursuant to subsection (a) of any proclamation shall apply only upon request therefor filed with the customs officer concerned on or before the 90th day after the date of such proclamation and subject to such other conditions as the President may specify.

TERMINATION OF PROCLAMATIONS

SEC. 204. The President is authorized at any time to terminate, in whole or in part, any proclamation issued pursuant to section 201 or 202 of this Act.

SPECIAL REPORTS TO CONGRESS

SEC. 205. (a) No later than August 31, 1968, the President shall submit to the Senate and the House of Representatives a special report on the comprehensive review called for by Article IV(c) of the Agreement. In such report he shall advise the Congress of the progress made toward the achievement of the objectives of Article I of the Agreement.

(b) Whenever the President finds that any manufacturer has entered into any undertaking, by reason of governmental action, to increase the Canadian value added of automobiles, buses, specified commercial vehicles, or original equipment parts produced by such manufacturer in Canada after August 31, 1968, he shall report such finding to the Senate and the House of Representatives. The President shall also report whether such undertaking is additional to undertakings agreed to in letters of undertaking submitted by such manufacturer before the date of enactment of this Act.

(c) The reports provided for in subsections (a) and (b) of this section shall include recommendations for such further steps, including legislative action, if any, as may be necessary for the achievement of the purposes of the Agreement and this Act.

TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

GENERAL AUTHORITY

Sec. 301. Subject to section 302 of this Act, a petition may be filed for tariff adjustment or for a determination of eligibility to apply for adjustment assistance under title III of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1901-1991) as though the reduction or elimination of a duty proclaimed by the President pursuant to section 201 or 202 of this Act were a concession granted under a trade agreement referred to in section 301 of the Trade Expansion Act of 1962.

SPECIAL AUTHORITY DURING TRANSITIONAL PERIOD UNDER THE AGREEMENT

Sec. 302. (a) After the 90th day after the date of the enactment of this Act and before July 1, 1968, a petition under section 301 of this Act for a determination of eligibility to apply for adjustment assistance may be filed with the President by—

(1) a firm which produces an automative product, or its representative; or

(2) a group of workers in a firm which produces an automotive product, or their certified or recognized union or other duly authorized representative.

(b) After a petition is filed by a firm or group of workers under subsection (a), the President shall determine whether—

(1) dislocation of the firm or group of workers has occurred or threatens to occur;

(2) production in the United States of the automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the automotive product like or directly competitive therewith, has decreased appreciably; and

(3)(A) imports into the United States from Canada of the Canadian automotive product like or directly competitive with that produced by the firm, or an appropriate subdivision thereof, have increased appreciably; or

(B) exports from the United States to Canada of the United States automotive product concerned produced by the firm, or an appropriate subdivision thereof, and of the United States automotive product like or directly competitive therewith, have decreased appreciably, and the decrease in such exports is greater than the decrease, if any, in production in Canada of the Canadian automotive product like or directly competitive with the United States automotive product being exported.

(c) If the President makes an affirmative determination under paragraphs (1), (2), and (3) of subsection (b), with respect to a firm or group of workers, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance, unless the President determines that the operation of the Agreement has not been the primary factor in causing or threatening to cause dislocation of the firm or group of workers.

(d) If the President makes an affirmative determination under paragraph (1) but a negative determination under paragraph (2) or (3) of subsection (b), with respect to a firm or group of workers, the President shall determine whether the operation of the Agreement has nevertheless been the primary factor in causing or threatening to cause dislocation of the firm or group of workers. If the President makes such an affirmative determination, he shall promptly certify that as a result of its dislocation the firm or group of workers is eligible to apply for adjustment assistance.

(e)(1) In order to provide the President with a factual record on the basis of which he may make the determinations referred to in subsections (b), (c), and (d) with respect to a firm or a group of workers, the President shall promptly transmit to the Tariff Commission a copy of each petition filed under such subsection (a) and, not later than 5 days after the date on which the petition is filed, shall request the Tariff Commission to conduct an investigation related to questions of fact relevant to such determinations and to make a report of the facts disclosed by such investigation. In his request, the President may specify the particular kinds of data which he deems appropriate. Upon receipt of the President's request, the Tariff Commission shall promptly institute the investigation and public notice thereof in the Federal Register.

(2) In the course of each investigation conducted under paragraph (1), the Tariff Commission shall, after reasonable notice, hold a public hearing, if such hearing is requested (not later than 10 days after the date of the publication of its notice under paragraph (1)) by the petitioner or any other person showing a proper interest in the subject matter of the investigation, and shall afford interested persons an opportunity to be present, to produce evidence, and to be heard at such hearing.

(3) Not later than 50 days after the date on which it receives the request of the President under paragraph (1), the Tariff Commission shall transmit to the President a report of the facts disclosed by its investigation, together with the transcript of the hearing and any briefs which may have been submitted in connection with such investigation.

(f)(1) The President shall make each final determination under subsection (b) (c), or (d) with respect to a firm or group of workers only after he has sought advice from the Departments of Commerce, Labor, and the Treasury, the Small Business Administration, and such other agencies as he may deem appropriate.

(2) The President shall make each such final determination not later than 15 days after the date on which he receives the Tariff Commission's report, unless, within such period, the President requests additional factual information from the Tariff Commission.

In this event, the Tariff Commission shall, not later than 25 days after the date on which it receives the President's request, furnish such additional factual information in a supplemental report, and the President shall make his final determination not later than 10 days after the date on which he receives such supplemental report.

(3) The President shall promptly publish in the Federal Register a summary of each final determination under this section.

(g) Any certification with respect to a group of workers made by the President under this section shall—

(1) specify the date on which the dislocation began or threatens to begin; and

(2) be terminated by the President whenever he determines that the operation of the Agreement is no longer the primary factor in causing separations from the firm or subdivision thereof, in which case such termination shall apply only with respect to separations occurring after the termination date specified by the President.

(h) Any certification with respect to a firm or a group of workers or any termination of such certification, including the specification of a date in such certification or termination, made by the President under this section shall constitute a certification or termination, including the specification of a date therein, under section 302 of the Trade Expansion Act of 1962 (19 U.S.C., sec. 1902) for purposes of chapter 2 or of title III of that Act.

(i) If a firm which has been certified under this section applies for tax assistance as provided by section 317 of the Trade Expansion Act of 1962, the reference in subsection (a)(2) of such section 317 to a trade or business which was seriously injured by increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements shall be treated as referring to a trade or business which was seriously injured by the operation of the Agreement.

(j) Notwithstanding any provision of chapter 3 of title III of the Trade Expansion Act of 1962 or of this title, applications based on any certification made by the President under this section for—

(1) trade readjustment allowances for weeks of unemployment beginning after January 17, 1965, and before the 90th day after the date of the enactment of this Act, and

(2) relocation allowances for relocations occurring after January 17, 1965, and before such 90th day,

shall be determined in accordance with regulations prescribed by the Secretary of Labor.

(k) The President is authorized to exercise any of his functions under this section through such agency or other instrumentality of the United States Government as he may direct and in conformity with such rules or regulations as he may prescribe.

(l) For purposes of this section—

(1) The term "automotive product" means a motor vehicle or a fabricated component to be used as original equipment in the manufacture of motor vehicles.

(2) The term "dislocation" means—

(A) in the case of a firm, injury to the firm, which may be evidenced by such conditions as idling of productive facilities, inability to operate at a level of reasonable profit, or unemployment or underemployment and which is of a serious nature; and

(B) in the case of a group of workers, unemployment or underemployment of a significant number or proportion of the workers of a firm or an appropriate subdivision thereof.

(3) The term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustees in bankruptcy, and receivers under decree of any court. A firm, together with any predecessor, successor, or affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

(4) The term "operation of the Agreement" includes governmental or private actions in the United States or Canada directly related to the conclusion or implementation of the Agreement.

ADJUSTMENT ASSISTANCE RELATED TO OTHER AGREEMENTS

SEC. 303. At the time the President transmits to the Congress a copy of any agreement pursuant to section 202(d)(1), he shall recommend to the Congress such legislative provisions concerning adjustment assistance to firms and workers as he determines to be appropriate in light of the anticipated economic impact of the reduction or elimination of duties provided for by such agreement.

AUTHORIZATION OF APPROPRIATIONS

SEC. 304. There are hereby authorized to be appropriated such sums as may be necessary from time to time to carry out the provisions of this title, which sums are authorized to be appropriated to remain available until expended.

TITLE IV—MODIFICATIONS OF TARIFF SCHEDULES OF THE UNITED STATES

ENTRY INTO FORCE AND STATUS OF MODIFICATIONS

SEC. 401. (a) The modifications of the Tariff Schedules of the United States provided for in this title shall not enter into force except as proclaimed by the President pursuant to section 201(a) of this Act.

(b) The rates of duty in column numbered 1 of the Tariff Schedules of the United States which are modified pursuant to section 201(a) of this Act shall be treated—

(1) as not having the status of statutory provisions enacted by the Congress, but

(2) as having been proclaimed by the President as being required to carry out a foreign trade agreement to which the United States is a party.

REFERENCES TO TARIFF SCHEDULES

SEC. 402. Whenever in this title a modification is expressed in terms of a modification of an item or other provision, the reference shall be considered to be made to an item or other provision of the Tariff Schedules of the United States (19 U.S.C., sec. 1202). Each page reference "(p.)" in this title refers to the page on which the item or provision referred to appears both in part II of the Federal Register for August 7, 1963, and in volume 77A of the United States Statutes at Large.

DEFINITION OF CANADIAN ARTICLE

SEC. 403. In general headnote 3 (pp. 11 and 12) redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively, and insert a new paragraph (d) as follows:

[Text of general headnote 3(c).]

DEFINITION OF ORIGINAL MOTOR-VEHICLE EQUIPMENT

SEC. 404. In the headnotes for subpart B, part 6, schedule 6, add after headnote 1 (p. 325) the following new headnote:

[Text of headnote 2, part 6B, schedule 6.]

IDENTIFICATION OF AUTOMOTIVE PRODUCTS

SEC. 405. (a) Redesignate item 692.25 (p. 326) as 692.27; in headnote 1(b) of subpart B, part 6, schedule 6 (p. 325) substitute "item 692.27" in lieu of "item 692.25"; and insert in proper numerical sequence new items as follows:

"692.06	If Canadian article, but not including any electric trolley bus, three-wheeled vehicle, or trailer accompanying an automobile truck tractor (see general headnote 3(d))	Free
692.11	If Canadian article, but not including any three-wheeled vehicle (see general headnote 3(d))	Free
692.21	Chassis, if Canadian article, except chassis for an electric trolley bus, or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.23	Chassis, if Canadian article, except chassis designed primarily for a vehicle described in item 692.15 or a three-wheeled vehicle; bodies (including cabs), if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.25	If Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free
692.28	Automobile truck tractors, if Canadian article: other articles, if Canadian article and original motor-vehicle equipment (see headnote 2 of this subpart)	Free"

(b) Insert in proper numerical sequence new items as follows:

"361.90	Any article described in the foregoing items 360.20 to 360.70, inclusive, 360.80, 361.80, or 361.85, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
516.98	Any article described in the foregoing items 516.71 to 516.76, inclusive, or 516.94, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
646.79	Any article described in the foregoing items 646.20 and items 646.78, inclusive (except 646.45 and 646.47), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
652.39	Any article described in the foregoing items 652.12 to 652.38, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
658.10	Any article described in the foregoing items 657.09 to 658.00, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
682.65	Any article described in the foregoing items 682.10 to 682.60, inclusive (except 682.50), if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free
685.55	Any article described in the foregoing items 685.20 to 685.50, inclusive, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free

721.20 Any article in the foregoing item covering clocks, clock movements, clock cases and dials and parts thereof, plates (720.67), assemblies and subassemblies for clock movements, and other parts for clock movements, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) .... Free"

(c) Insert in proper numerical sequence new items 355.27, 389.80, 728.30, 745.80, and 774.70, each having an article description and rate as follows:

"Any article described in the foregoing provisions of this subpart, if Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) .... Free"

(d) Redesignate item 613.16 as 613.18, item 652.85 as 652.84, item 652.87 as 652.88, item 680.34 as 680.33, item 680.58 as 680.60, item 680.59 as 680.70, item 680.60 as 680.90, and item 711.91 as 711.93; and insert in proper numerical sequence new items as follows:

207.01
220.46
357.91
357.96
358.03
517.82
535.15
540.72
544.18
544.32
544.42
544.52
544.55
545.62
545.64
547.16
610.81
613.16
613.19
618.48
620.47
642.21
642.86
642.88
646.93
647.02
647.06
652.10
652.76
652.85
652.87
652.89
660.43
660.45
660.47
660.51
660.53
660.55
660.86
660.93
660.95
661.11
661.13
661.16
661.21
661.36
661.93
661.96
662.36
662.51
664.51
678.51
680.21
680.23
680.28
680.31
680.34
680.36
680.58
680.91
682.71
682.91
683.11
683.16
683.61
683.66
684.41
684.63
684.71
685.71
685.81
685.91
686.11
686.23
686.61
686.81
687.51
687.61
688.13
688.41
711.85
711.91
711.99
712.51
727.07
772.66
772.81
772.86
773.26
773.31
791.81
791.91

each such item having the article description "If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) * * *" subordinate to the immediately preceding article description, and having "Free" in rate of duty column numbered 1.

TITLE V—GENERAL PROVISIONS

AUTHORITIES

SEC. 501. The head of any agency performing functions authorized by this Act may—

(1) authorize the head of any agency to perform any of such functions; and

(2) prescribe such rules and regulations as may be necessary to perform such functions.

ANNUAL REPORT

SEC. 502. The President shall submit to the Congress an annual report on the implementation of this Act. Such report shall include information regarding new negotiations, reductions or eliminations of duties, reciprocal concessions obtained, and other information relating to activities under this Act. Such report shall also include information providing an evaluation of the Agreement and this Act in relation to the total national interest, and specifically shall include, to the extent practicable, information with respect to—

(1) the production of motor vehicles and motor vehicle parts in the United States and Canada.

(2) the retail prices of motor vehicles and motor vehicles parts in the United States and Canada.

(3) employment in the United States and Canada, and

(4) United States and Canadian trade in motor vehicles and motor vehicle parts, particularly trade between the United States and Canada.

APPLICABILITY OF ANTIDUMPING AND ANTITRUST LAWS

SEC. 503. Nothing contained in this Act shall be construed to affect or modify the provisions of subtitle B of title VII of the Tariff Act of 1930, or of any of the antitrust laws as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12).

TITLE VI—MISCELLANEOUS PROVISIONS

JOINT COMMITTEE ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES

SEC. 601. Section 601(e) of the Revenue Act of 1941 (55 Stat. 726) (relating to the Joint Committee on Reduction of Nonessential Federal Expenditures) is amended to read as follows:

"(e) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

General Note 3(c)(iii) of Harmonized Tariff Schedule

AUTOMOTIVE PRODUCTS AND MOTOR VEHICLES ELIGIBLE FOR SPECIAL TARIFF TREATMENT.—Articles entered under the Automotive Products Trade Act are subject to the following provisions:

(A) Motor vehicles and original motor-vehicle equipment which are Canadian articles and which fall in provisions for which the rate of duty "Free (B)" appears in the "Special" subcolumn may be entered free of duty. As used in this note—

(1) The term "Canadian article" means an article which originates in Canada, as defined in subdivision (c)(vii) of this note.

(2) The term "original motor-vehicle equipment", as used with reference to a Canadian article (as defined above), means such a Canadian article which has been obtained from a supplier in Canada under or pursuant to a written order, contract or letter of intent of a bona fide motor vehicle manufacturer in the United States, and which is a fabricated component originating in Canada, as defined in subdivision (c)(vii) of this note, and intended for use as original equipment in the manufacture in the United States of a motor vehicle, but the term does not include trailers or articles to be used in their manufacture.

(3) The term "motor vehicle", as used in this note, means a motor vehicle of a kind described in headings 8702, 8703 and 8704 of chapter 87 (excluding an electric trolley bus and a three-wheeled vehicle) or an automobile truck tractor principally designed for the transport of persons or goods.

(4) The term "bona fide motor-vehicle manufacturer" means a person who, upon application to the Secretary of Commerce, is determined by the Secretary to have produced no fewer than 15 complete motor vehicles in the United States during the previous 12 months, and to have installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. The Secretary of Commerce shall maintain, and publish from time to time in the *Federal Register*, a list of the names and addresses of bona fide motor-vehicle manufacturers.

(B) If any Canadian article accorded the status of original motor-vehicle equipment is not so used in the manufacture in the United States of motor vehicles, such Canadian article or its value (to be recovered from the importer or other person who diverted the article from its intended use as original motor-vehicle equipment) shall be subject to forfeiture, unless at the time of the diversion of the Canadian article the United States Customs Service is notified in writing, and, pursuant to arrangements made with the Service—

(1) the Canadian article is, under customs supervision, destroyed, or exported, or

(2) duty is paid to the United States Government in an amount equal to the duty which would have been payable at the time of entry if the Canadian article had not been entered as original motor-vehicle equipment.

Chapter 14: ORGANIZATION OF TRADE POLICY FUNCTIONS

A. CONGRESS

1. Congressional Advisers

Section 161 of Trade Act of 1974, as amended

[19 U.S.C. 2211, P.L. 93-618, as amended by P.L. 96-39, and P.L. 100-418]

SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.

(a) SELECTION.—

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) BRIEFING.—

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) COMMITTEE CONSULTATION.—The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

2. Reports to Congress

Sections 162 and 163 of Trade Act of 1974, as amended

[19 U.S.C. 2212, P.L. 93-618, as amended by P.L. 100-418, and P.L. 100-647]

SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable, after a trade agreement entered into under section 123 or 124 or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevent considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term "Member" includes any Delegate or Resident Commissioner.

SEC. 163. REPORTS.

(a) ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM AND NATIONAL TRADE POLICY AGENDA.—

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

(A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this Act during the preceding calendar year; and

(B) the national trade policy agenda for the year in which the report is submitted.

(2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—

(A) new trade negotiations;

(B) changes made in duties and nontariff barriers and other distortions of trade of the United States;

(C) reciprocal concessions obtained;

(D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);

(E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;

(F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;

(G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;

(H) the measures being taken to seek the removal of other significant foreign import restrictions;

(I) each of the referrals made under section 141(d)(1)(B) and any action taken with respect to such referral;

(J) other information relating to the trade agreements program and to the agreements entered into thereunder; and

(K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

(3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—

(i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;

(ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;

(iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and

(iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.

(B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.

(C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 135 and shall consult with the appropriate committees of the Congress.

(D) The United States Trade Representative (hereafter referred to in this section as the "Trade Representative") and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—

(i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and

(ii) any development which may require, or result in, changes to any of such objectives or priorities.

(b) ANNUAL TRADE PROJECTION REPORT.—

(1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the balance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and

submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the "Committees") on or before March 1 of each year a report which consists of—

(A) a review and analysis of—

(i) the merchandise balance of trade,

(ii) the goods and services balance of trade,

(iii) the balance on the current account,

(iv) the external debt position,

(v) the exchange rates,

(vi) the economic growth rates,

(vii) the deficit or surplus in the fiscal budget, and

(viii) the impact on United States trade of market barriers and other unfair practices,

of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;

(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and

(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

(2) To the extent that subjects referred to in paragraph (1) (A), (B), or (C) are covered in the national trade policy agenda required under subsection (a)(1)(B) or in other reports required by this Act or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion referred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

(c) ITC REPORTS.—The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

Section 2202 of Omnibus Trade and Competitiveness Act of 1988

[15 U.S.C. 4711; P.L. 100–418]

SEC. 2202. COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES.

The Secretary of State shall, not later than January 31 of each year, prepare and transmit to the Committee on Foreign Affairs and the Committee on Ways and Means of the House of Representatives, to the Committee on Foreign Relations and the Committee on Finance of the Senate, and to other appropriate committees of the Congress, a detailed report regarding the economic policy and trade practices of each country with which the United States has an economic or trade relationship. The Secretary may direct the appropriate officers of the Department of State who are serving overseas, in consultation with appropriate officers or employees of other departments and agencies of the United States, including the Department of Agriculture and the Department of Commerce, to coordinate the preparation of such information in a country as is necessary to prepare the report under this section. The report shall identify and describe, with respect to each country—

(1) the macroeconomic policies of the country and their impact on the overall growth in demand for United States exports;

(2) the impact of macroeconomic and other policies on the exchange rate of the country and the resulting impact on price competitiveness of United States exports;

(3) any change in structural policies (including tax incentives, regulations governing financial institutions, production standards, and patterns of industrial ownership) that may affect the country's growth rate and its demand for United States exports;

(4) the management of the country's external debt and its implications for trade with the United States;

(5) acts, policies, and practices that constitute significant barriers to United States exports or foreign direct investment in that country by United States persons, as identified under section 181(a)(1) of the Trade Act of 1974 (19 U.S.C. 2241(a)(1));

(6) acts, policies, and practices that provide direct or indirect government support for exports from that country, including exports by small businesses;

(7) the extent to which the country's laws and enforcement of those laws afford adequate protection to United States intellectual property, including patents, trademarks, copyrights, and mask works; and

(8) the country's laws, enforcement of those laws, and practices with respect to internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974), the conditions of worker rights in any sector which produces goods in which United States capital is invested, and the extent of such investment.

Section 5421 of Omnibus Trade and Competitiveness Act of 1988

[2 U.S.C. 194b; P.L. 100–418]

SEC. 5421. COMPETITIVENESS IMPACT STATEMENTS.

(a) The President or the head of the appropriate department or agency of the Federal Government shall include in every recommendation or report made to the Congress on legislation which may affect the ability of United States firms to compete in domestic and international commerce a statement of the impact of such legislation on—

(1) the international trade and public interest of the United States, and

(2) the ability of United States firms engaged in the manufacture, sale, distribution, or provision of goods or services to compete in foreign or domestic markets.

(b) This section provides no private right of action as to the need for or adequacy of the statement required by subsection (a).

(c) This section shall cease to be effective six years from the date of enactment.

3. Congressional Procedures With Respect to Presidential Actions

Sections 151–154 of Trade Act of 1974, as amended

[19 U.S.C. 2191, P.L. 93–618, as amended by P.L. 96–39, P.L. 98–573, and P.L. 100–418]

SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) Rules of House of Representatives and Senate.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenues bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) Definitions.—For purposes of this section—

(1) The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements submitted to the House of Representatives and the Senate under section 102 of this Act or section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 and which contains—

(A) a provision approving such trade agreement or agreements,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either repealing or amending existing laws or providing new statutory authority.

(2) The term "implementing revenue bill" means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term "approval resolution" means only a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of nondiscriminatory treatment with respect to the products of ——— transmitted by the President to the Congress on ———.", the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement is submitted to the House of Representatives and the Senate under section 102, the implementing bill submitted by the President with respect to such trade agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement is submitted, the implementing bill shall be introduced in that House as provided in the preceding sentence, on the first day thereafter on which the House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commerical agreement, entered into under title IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either

House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) AMENDMENTS PROHIBITED.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such a bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

(3) For purposes of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House was not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to our disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(a) CONTENTS OF RESOLUTION.—

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ———.", the blank space being filled with the appropriate date; and

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third space being filled with the appropriate date.

(2) The second blank space referred to in paragraph (1)(B) shall be filled as follows:

(A) in the case of a resolution referred to in section 303(e) of the Tariff Act of 1930, with the phrase "the determination of the Secretary of the Treasury under section 303(d) of the Tariff Act of 1930";

(B) in the case of a resolution referred to in section 407(c)(2), with the phrase "the extension of nondiscriminatory treatment with respect to the products of ———" (with this blank space being filled with the name of the country involved); and

(C) in the case of a resolution referred to in section 407(c)(3), with the phrase "the report of the President submitted under section ——— of the Trade Act of 1974 with respect to ———" (with the first blank space being filled with "402(b)" or "409(b)", as appropriate, and the second blank space being filled with the name of the country involved).

(b) REFERENCE TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEES.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except no motion to discharge shall be in order after the com-

mittee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such

motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) Special Rule for Concurrent Resolutions.—In the case of a resolution described in subsection (a)(1), if prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.

(a) Contents of Resolutions.—For purposes of this section, the term "resolution" means only—

(1) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the extension of the authority contained in section 402(c)(1) of the Trade Act of 1974 recommended by the President to the Congress on ———, except with respect to ———.", with the first blank space being filled with the appropriate date and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the except clause being omitted if there is not such country; and

(2) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on ——— with respect to ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled with the appropriate date, and the third blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the with-respect-to clause being omitted if the extension of the authority is not approved with respect to any country.

(b) Application of Rules of Section 152; Exceptions.—

(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted, and, in the case of a resolution related to section 402(d)(4), 20 calendar days shall be substituted for 30 days.

(3) That part of section 152(d)(2) which provides that no amendment is in order shall not apply to any amendment to a

resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause, in the case of a resolution described in subsection (a)(1), or a with-respect-to clause, in the case of a resolution described in subsection (a)(2). The time limit on a debate on a resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may, from time under the control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a)(1) received from the other House), if that House has adopted a resolution with respect to the same recommendation.

SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.

(a) Whenever, pursuant to section 102(e), 203(b), 402(d), or 407 (a) or (b), or section 303(e) of the Tariff Act of 1930, a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c), 407(c)(2), and 407(c)(3), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

4. Approval of Certain Trade Agreements and Relationship of Trade Agreements to U.S. Law

Sections 2(a) and 3(c) of Trade Agreements Act of 1979

[19 U.S.C. 2503, 2504, P.L. 96-39]

SEC. 2 APPROVAL OF TRADE AGREEMENTS.

(a) APPROVAL OF AGREEMENTS AND STATEMENTS OF ADMINISTRATIVE ACTION.—In accordance with the provisions of sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Congress approves the trade agreements described in subsection (c) submitted to the Congress on June 19, 1979, and the statements of administrative action proposed to implement such trade agreements submitted to the Congress on that date.

SEC. 3. RELATIONSHIP OF TRADE AGREEMENTS TO UNITED STATES LAW.

(c) CHANGES IN STATUTES TO IMPLEMENT A REQUIREMENT, AMENDMENT, OR RECOMMENDATION.—

(1) PRESIDENTIAL DETERMINATION.—Whenever the President determines that it is necessary or appropriate to amend, repeal, or enact a statute of the United States in order to implement any requirement of, amendment to, or recommendation under such an agreement, he shall submit to the Congress a draft of a bill to accomplish the amendment, repeal, or enactment and a statement of any administrative action proposed to implement the requirement, amendment, or recommendation. Not less than 30 days before submitting such a bill, the President shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and each committee of the House or Senate which has jurisdiction over legislation involving subject matters which would be affected by such amendment, repeal, or enactment. The consultation shall treat all matters relating to the implementation of such requirement, amendment, or recommendation, as provided in paragraphs (2) and (3).

(2) CONDITIONS FOR TAKING EFFECT UNDER UNITED STATES LAW.—No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representative and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of

United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) RECOMMENDATIONS AS TO APPLICATION.—The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 102(f) of the Trade Act of 1974, with respect to a trade agreement.

(4) CONGRESSIONAL PROCEDURES APPLICABLE.—The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 151 of the Trade Act of 1974, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 151 of such Act to such bill—

(A) the term "trade agreement" shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term "implementing bill" or "implementing revenue bill", whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

B. EXECUTIVE BRANCH

1. Interagency Trade Organization

Section 242 of Trade Expansion Act of 1962, as amended

[19 U.S.C. 1872, P.L. 87-794, as amended by P.L. 93-618, P.L. 96-39, Reorganization Plan No. 3 of 1979, and P.L. 100-418]

SEC. 242. INTERAGENCY TRADE ORGANIZATION.

(a)(1) The President shall establish an interagency organization.

(2) The functions of the organization are—

(A) to assist, and make recommendations to, the President in carrying out the functions vested in him by the trade laws and to advise the United States Trade Representative (hereinafter in this section referred to as the "Trade Representative") in carrying out the functions set forth in section 141 of the Trade Act of 1974;

(B) to assist the President, and advise the Trade Representative, with respect to the development and implementation of the international trade policy objectives of the United States; and

(C) to advise the President and the Trade Representative with respect to the relationship between the international trade policy objectives of the United States and other major policy areas which may significantly affect the overall international trade policy and trade competitiveness of the United States.

(3) The interagency organization shall be composed of the following:

(A) The Trade Representative, who shall be chairperson.
(B) The Secretary of Commerce.
(C) The Secretary of State.
(D) The Secretary of the Treasury.
(E) The Secretary of Agriculture.
(F) The Secretary of Labor.

The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports submitted to him by the United States International Trade Commission under section 201(d) of the Trade Act of 1974.

(3) advise the President of the results of hearings held pursuant to section 302(b)(2) of the Trade Act of 1974, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

In carrying out its functions under this subsection, the organization shall take into account the advice of the congressional advisers and private sector advisory committees, as well as that of any committee or other body established to advise the department, agency, or office which a member of the organization heads.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the United States International Trade Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to section 302(b)(2) of the Trade Act of 1974, and for the carrying out of other functions assigned to the organization pursuant to this section.

[Section 1621(b) of the Omnibus Trade and Competitiveness Act of 1988, in referring to section 242(a) as amended by section 1621(a) of that Act, states:

> [It is the sense of Congress that the interagency organization established under subsection (a) should be the principal interagency forum within the executive branch on international trade policy matters.]

Reorganization Plan No. 3 of 1979

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, September 25, 1979, pursuant to the provisions of chapter 9 of title 5 of the United States Code, as amended by P.L. 97-377.

Reorganization of Functions Relating to International Trade

SEC. 1. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) The Office of the Special Representative for Trade Negotiations is redesignated the Office of the United States Trade Representative.

(b)(1) The Special Representative for Trade Negotiations is redesignated the United States Trade Representative (hereinafter referred to as the "Trade Representative"). The Trade Representative shall have primary responsibility, with the advice of the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) (hereinafter referred to as the "Committee"), for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters and, to the extent they are related to international trade policy, direct investment matters. The Trade Representative shall serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade.

(2) The Trade Representative shall have lead responsibility for the conduct of international trade negotiations including commodity and direct investment negotiations in which the United States participates.

(3) To the extent necessary to assure the coordination of international trade policy, and consistent with any other law, the Trade Representative, with the advice of the Committee, shall issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of the following international trade functions. Such guidance shall determine the policy of the United States with respect to international trade issues arising in the exercise of such functions:

(A) matters concerning the General Agreement on Tariffs and Trade, including implementation of the trade agreements set forth in section 2(c) of the Trade Agreements Act of 1979; United States Government positions on trade and commodity matters dealt with by the Organization for Economic Cooperation and Development, the United Nations Conference on Trade and Development, and other multilateral organizations; and the assertion and protection of the rights of the United States under bilateral and multilateral international trade and commodity agreements;

(B) expansion of exports from the United States;

(C) policy research on international trade, commodity, and direct investment matters;

(D) to the extent permitted by law, overall United States policy with regard to unfair trade practices, including enforcement of countervailing duties and antidumping functions under section 303 and title VII of the Tariff Act of 1930:

(E) bilateral trade and commodity issues, including East-West trade matters;

(F) international trade issues involving energy.

(4) All functions of the Trade Representative shall be conducted under the direction of the President.

(c) The Deputy Special Representatives for Trade Negotiations are redesignated Deputy United States Trade Representatives.

SEC. 2. DEPARTMENT OF COMMERCE.

(a) The Secretary of Commerce (hereinafter referred to as the "Secretary") shall have, in addition to any other functions assigned by law, general operational responsibility for major nonagricultural international trade functions of the United States Government, including export development, commercial representation abroad, the administration of the antidumping and countervailing duty laws, export controls, trade adjustment assistance to firms and communities, research and analysis, and monitoring compliance with international trade agreements to which the United States is a party.

(b)(1) There shall be in the Department of Commerce (hereinafter referred to as the "Department") a Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall receive compensation at the rate payable for Level II of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(2) The position of Under Secretary of Commerce established under section 1 of the Act of June 5, 1939 (ch. 180, 53 Stat. 808; 15 U.S.C. 1502) is abolished.

(c) There shall be in the Department an Under Secretary for International Trade appointed by the President, by and with the advice and consent of the Senate. The Under Secretary for International Trade shall receive compensation at the rate payable for Level III of the Executive Schedule, and shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(d) There shall be in the Department two additional Assistant Secretaries appointed by the President, by and with the advice and consent of the Senate. Each such Assistant Secretary shall perform such duties and exercise such powers as the Secretary may from time to time prescribe.

(e) There shall be in the Department of Commerce a Director General of the United States and Foreign Commercial Services who shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate prescribed by law for level IV of the Executive Schedule.

SEC. 3. EXPORT-IMPORT BANK OF THE UNITED STATES.

The Trade Representative and the Secretary shall serve, ex officio and without vote, as additional members of the Board of Directors of the Export-Import Bank of the United States.

SEC. 4. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) The Trade Representative shall serve, ex officio, as an additional voting member of the Board of Directors of the Overseas Private Investment Corporation. The Trade Representative shall be the Vice Chair of such Board.

(b) There shall be an additional member of the Board of Directors of the Overseas Private Investment Corporation who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall not be an official or employee of the Government of the United States. Such Director shall be appointed for a term of no more than three years.

SEC. 5. TRANSFER OF FUNCTIONS.

(a)(1) There are transferred to the Secretary all functions of the Secretary of the Treasury, the General Counsel of the Department of the Treasury, or the Department of the Treasury pursuant to the following:

(A) section 305(b) of the Trade Agreements Act of 1979 (19 U.S.C. 215(b)), to be exercised in consultation with the Secretary of the Treasury;

(B) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(C) section 303 and title VII (including section 77(1)) of the Tariff Act of 1930 (19 U.S.C. 1303, 1671 *et seq.*), except that the Customs Service of the Department of the Treasury shall accept such deposits, bonds, or other security as deemed appropriate by the Secretary, shall assess and collect such duties as may be directed by the Secretary, and shall furnish such of its important records or copies thereof as may be requested by the Secretary incident to the functions transferred by this subparagraph;

(D) sections 514, 515, and 516 ~~of the Tari~~ff Act of 1930 (19 U.S.C. 1514, 1515, and 1516) insofar as they relate to any protest, petition, or notice of desire to contest described in section 1002(b)(1) of the Trade Agreements Act of 1979;

(E) with respect to the functions transferred by subparagraph (C) of this paragraph, section 318 of the Tariff Act of 1930 (19 U.S.C. 1318), to be exercised in consultation with the Secretary of the Treasury;

(F) with respect to the functions transferred by subparagraph (C) of this paragraph, section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)), and, insofar as it provides authority to issue regulations and disseminate information, to be exercised in consultation with the Secretary of the Treasury to the extent that the Secretary of the Treasury has responsibility under subparagraph (C), section 502(a) of such Act (19 U.S.C. 1502(a));

(G) with respect to the functions transferred by subparagraph (C) of this paragraph, section 617 of the Tariff Act of 1930 (19 U.S.C. 1617); and

(H) section 2632(e) of title 28 of the United States Code, insofar as it relates to actions taken by the Secretary reviewable under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516(a)).

(2) The Secretary shall consult with the Trade Representative regularly in exercising the functions transferred by subparagraph (C) of paragraph (1) of this subsection, and shall consult with the Trade Representative regarding any substantive regulation proposed to be issued to enforce such functions.

(b)(1) There are transferred to the Secretary all trade promotion and commercial functions of the Secretary of State or the Department of State that are—

(A) performed in full-time overseas trade promotion and commercial positions; or

(B) performed in such countries as the President may from time to time prescribe.

(2) To carry out the functions transferred by paragraph (1) of this subsection, the President, to the extent he deems it necessary, may authorize the Secretary to utilize Foreign Service personnel authorities and to exercise the functions vested in the Secretary of State by the Foreign Service Act of 1946 (22 U.S.C. 801 *et seq.*) and by any other laws with respect to personnel performing such functions.

(c) There are transferred to the President all functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)).

(d) Appropriations available to the Department of State for Fiscal Year 1980 for representation of the United States concerning matters arising under the General Agreement on Tariffs and Trade and trade and commodity matters dealt with under the auspices of the United Nations Conference on Trade and Development are transferred to the Trade Representative.

(e) There are transferred to the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) all functions of the East-West Foreign Trade Board under section 411 (a) and (b) of the Trade Act of 1974 (19 U.S.C. 2441(a) and (b)).

SEC. 6. ABOLITION.

The East-West Foreign Trade Board established under section 411 of the Trade Act of 1974 (19 U.S.C. 2441) is abolished.

SEC. 7. RESPONSIBILITY OF THE SECRETARY OF STATE.

Nothing in this reorganization plan is intended to derogate from the responsibility of the Secretary of State for advising the President on foreign policy matters, including the foreign policy aspects of international trade and trade related matters.

SEC. 8. INCIDENTAL TRANSFERS; INTERIM OFFICERS.

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held available or to be made available in connection with the functions transferred under this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the appropriate agency, organization, or component at such time or times as such Director shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation originally was made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agency abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of the reorganization plan.

(b) Pending the assumption of office by the initial officers provided for in section 2 of this reorganization plan, the functions of each such office may be performed, for up to a total of 60 days, by such individuals as the President may designate. Any individual so designated shall be compensated at the rate provided herein for such position.

SEC. 9. EFFECTIVE DATE.

The provisions of this reorganization plan shall take effect October 1, 1980, or at such earlier time or times as the President shall specify, but not sooner than the earliest time allowable under section 906 of title 5 of the United States Code.

Section 306(c)(1) of the Trade and Tariff Act of 1984

[19 U.S.C. 2114c, P.L. 98–573]

SEC. 306. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.

[(a); (b) Establishment of service industries development program by Secretary of Commerce; amendments of International Investment Survey Act of 1976.]

(c)(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962 or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department's or agency's attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representative, shall provide staff support and other assistance for negotiations or service-related issues by the United States Trade Representatives and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

2. Office of the United States Trade Representative

Section 141 of Trade Act of 1974, as amended*

[19 U.S.C. 2171, P.L. 93-618, as amended by Reorganization Plan No. 3 of 1979, P.L. 97-456, P.L. 98-573, P.L. 99-272, P.L. 99-514, P.L. 100-203, and P.L. 100-418]

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the "Office").

(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

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*Section 241, Trade Expansion Act of 1962 (P.L. 87-794), was repealed by P.L. 93-618.

[(3) Conforming amendments to title 5, United States Code.]

(c)(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representative as of the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

(3) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this chapter and shall have such other functions as the United States Trade Representative may direct.

(d)(1) In carrying out subsection (c) with respect to unfair trade practices, the United States Trade Representative shall—

(A) coordinate the application of interagency resources to specific unfair trade practice cases;

(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 181(b), or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economics and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

(3) For purposes of this subsection, the term "unfair trade practice" means any act, policy, or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

(D) may be an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.

(e) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive schedule in section 5314 of title 5, United States Code.

(2) employ experts and consultants in accordance with section 3109 of Title 5, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of Title 5, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of Title 5 for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of 1342 of title 31, United States Code;

(7) adopt an official seal, which shall be judicially noticed;

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of Title 5 [5 U.S.C. § 5701 et seq.] (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(f) The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g)(1)(A) There are authorized to be appropriated for fiscal year 1988 to the Office for the purposes of carrying out its functions not to exceed $15,172,000.

(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year 1988—

(i) not to exceed $69,000 may be used for entertainment and representation expenses of the Office; and

(ii) not to exceed $1,000,000 shall remain available until expended.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970 [5 U.S.C. § 5301 et seq.].

C. UNITED STATES INTERNATIONAL TRADE COMMISSION

1. Organization, General Powers, Procedures

Sections 330, 331, 333–335, and 339 of Tariff Act of 1930, as amended

[19 U.S.C. 1330, P.L. 71–361, as amended by Act of June 25, 1936, Act of June 25, 1948, Act of May 24, 1949, Act of Aug. 7, 1953, P.L. 85–686, P.L. 91–452, P.L. 93–618, P.L. 94–455, P.L. 95–106, P.L. 95–430, P.L. 97–456, P.L. 98–573, P.L. 99–272, P.L. 100–203, P.L. 100–418, and P.L. 100–647]

SEC. 330. ORGANIZATION OF COMMISSION.

(a) MEMBERSHIP.—The United States International Trade Commission (referred to in this Act as the "Commission") shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before January 3, 1975) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) TERMS OF OFFICE.—The terms of office of the commissioners holding office on January 3, 1975, which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c) CHAIRMAN AND VICE CHAIRMAN; QUORUM.—(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term—

(i) either of the two commissioners with the shortest period of service on the Commission as of the begining date of the term of office for which the designation of chairman is to be made; or

(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the limitation set forth in subparagraph (A)(i).

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) Effect of Divided Vote in Certain Cases.—(1) In a proceeding in which the Commission is required to determine—

(A) under section 201 of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as "serious injury"), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 201 or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determina-

tion of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 201(d)(1) of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections 202, and 203 of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 203(b) of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of sections 202 and 203 of such Act, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a determination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 203(c)(1) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the concurrent resolution described in such section 152 shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ————, ————, and ————." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2) There are authorized to be appropriated to the Commission for necessary expenses (including rental of conference rooms in the District of Columbia and elsewhere) for fiscal year 1988 not to exceed $35,386,000; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

SEC. 331. GENERAL POWERS.

(a) ADMINISTRATION.—(1) Except as provided in paragraph (2), the chairman of the Commission, shall—

(A) appoint amd fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary.

(B) procure the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, and

(C) exercise and be responsible for all other administrative functions of the Commission.

Any decision by the chairman under this paragraph shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS–15 of the General Schedule in section 5332 of title 5, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matters except to the extent that the Commission has adopted the policy being expressed.

(b) APPLICATION OF CIVIL SERVICE LAW.—Except for employees excepted under civil service rules, all employees of the Commission shall be appointed from lists of eligibles to be supplied by the Director of the Office of Personnel Management and in accordance with the civil service law.

(c) EXPENSES.—All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) PRINCIPAL OFFICE AT WASHINGTON.—The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) OFFICE AT NEW YORK.—The Commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) OFFICIAL SEAL.—The Commission is authorized to adopt an official seal, which shall be judicially noticed.

SEC. 333. TESTIMONY AND PRODUCTION OF PAPERS.

(a) AUTHORITY TO OBTAIN INFORMATION.—For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the Commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the Commission may prescribe, information in their possession pertaining to such investigation. Any member of the Commission may sign subpoenas, and members and agents of the Commission, when authorized by the Commission, may administer oath and affirmations, examine witnesses, take testimony, and receive evidence.

(b) WITNESSES AND EVIDENCE.—Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the Commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) MANDAMUS.—At the request of the Commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part or any order of the Commission made in pursuance thereof.

(d) DEPOSITIONS.—The Commission may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(e) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the person taking the same, except employees of the Commission, shall severally be entitled to the same fees and mileage as are paid for like services in the court of the United States.

(f) STATEMENTS UNDER OATH.—The Commission is authorized, in order to ascertain any facts required by subdivision (d) of section 332 to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) REPRESENTATION IN COURT PROCEEDINGS.—The Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, at the request of the Commission, by the Attorney General of the United States.

SEC. 334. COOPERATION WITH OTHER AGENCIES.

The Commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the Commission for the purposes of aiding and assisting in its work, and when directed by the President, shall furnish to the Commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the Commission and shall detail, from time to time, such officials and employees to said Commission as he may direct.

SEC. 335. RULES AND REGULATIONS.

The Commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

SEC. 339. TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. Any agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

Section 603 of Trade Act of 1974

[19 U.S.C. 2482, P.L. 93–618]

SEC. 603. INTERNATIONAL TRADE COMMISSION.

(a) In order to expedite the performance of its functions under this Act, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Commission may exercise any authority granted to it under any other Act.

(c) The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

Section 175(a)(1) of Trade Act of 1974

[19 U.S.C. 2232, P.L. 93–618]

SEC. 175. INDEPENDENT BUDGET AND AUTHORIZATION OF APPROPRIATIONS.

(a)(1) Effective with respect to the fiscal year beginning October 1, 1976, for purposes of the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), estimated expenditures and proposed appropriations for the United States International Trade Commission shall be transmitted to the President on or before October 15 of the year preceding the beginning of each fiscal year and shall be included by him in the Budget without revision, and the Commission shall not be considered to be a department or establishment for purposes of such Act.

2. Investigations

Section 332 of Tariff Act of 1930, as amended

[19 U.S.C. 1332, P.L. 71–361, as amended by P.L. 93–618, P.L. 96–39, P.L. 100–418, and P.L. 100–647]

SEC. 332. INVESTIGATIONS.

(a) INVESTIGATIONS AND REPORTS.—It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) INVESTIGATIONS OF TARIFF RELATIONS.—The Commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) Investigation of Paris Economy Pact.—The Commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) Information for President and Congress.—In order that the President and the Congress may secure information and assistance, it shall be the duty of the Commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the Commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of foreign countries of articles imported into the United States, whenever in the opinion of the Commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the Commission deems it advisable;

(4) Ascertain imports costs of such representative articles so selected;

(5) Ascertain the grower's producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) Definitions.—When used in this subdivision and in subdivision (d)—

(1) The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term "import cost" means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

[(f) Provision directing the Commission to ascertain the cost of crude petroleum during 3 years preceding 1930 has been executed.]

(g) Reports to President and Congress.—The Commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress. However, the

Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the Commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the Commission under such section during such year and the date on which each such investigation was commenced.

3. Uniform Statistical Data

Section 484(e) of Tariff Act of 1930, as amended

[19 U.S.C. 1484(e), P.L. 71-361, as amended by P.L. 93-618 and P.L. 95-106]

SEC. 484. ENTRY OF MERCHANDISE.

(e) STATISTICAL ENUMERATION.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

Section 608 of Trade Act of 1974

[19 U.S.C. 1484 note, P.L. 93-618]

SEC. 608. UNIFORM STATISTICAL DATA ON IMPORTS, EXPORTS, AND PRODUCTION.

[(a) Amendment of section 484(e) of Tariff Act of 1930 relating to statistical enumeration.]

(b) In carrying out the responsibilities under section 484(e), Tariff Act of 1930 and other pertinent statutes, the Secretary of Commerce and the United States International Trade Commission shall conduct jointly a study of existing commodity classification systems with a view to identifying the appropriate principles and concepts which should guide the organization and development of an enumeration of articles which would result in comparability of United States import, production, and export data. The Secretary and the United States International Trade Commission shall submit a report to both Houses of Congress and to the President with respect to such study no later than August 1, 1975.

(c) In further connection with its responsibilities pursuant to subsections (a) and (b), the United States International Trade Commission shall undertake an investigation under section 332(g) of the Tariff Act of 1930 which would provide the basis for—

(1) a report on the appropriate concepts and principles which should underlie the formulation of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade, taking into account how such a code could meet the needs of sound customs and trade reporting practices reflecting the interests of United States and other countries, such report to be submitted to both Houses of Congress and to the President as soon as feasible, but in any event, no later than June 1, 1975; and

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices,

and, in carrying out such responsibilities, the Commission shall report to both Houses of Congress and to the President, as it deems appropriate.

(d) The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the United States International Trade Commission in carrying out their responsibilities under subsections (a), (b), and (c).

(e) The amendment made by subsection (a) insofar as it relates to export declarations shall take effect on January 1, 1976.

National Trade Data Bank

Title V, Subtitle E, Part I of Omnibus Trade and Competitiveness Act of 1988

[15 U.S.C. 4901; P.L. 100-418]

SEC. 5401. DEFINITIONS.

For purposes of this subtitle—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5, United States Code;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management

System which is maintained and operated by the United States and Foreign Commercial Service and is established as part of the Data Bank under section 3816;

(5) the term "international economic data system" means the data system established as part of the Data Bank under section 5406 which contains data useful to policymakers and analysis concerned with international economics; and

(6) the term "Secretary" means the Secretary of Commerce.

SEC. 5402. INTERAGENCY TRADE DATA ADVISORY COMMITTEE.

(a) **Establishment.**—There is established the Interagency Trade Data Advisory Committee.

(b) **Membership.**—The Committee shall consist of—

(1) the United States Trade Representative;
(2) the Secretary of Agriculture;
(3) the Secretary of Defense;
(4) the Secretary of Commerce;
(5) the Secretary of Labor;
(6) the Secretary of the Treasury;
(7) the Secretary of State;
(8) the Director of the Office of Management and Budget;
(9) the Director of Central Intelligence;
(10) the Chairman of the Federal Reserve Board;
(11) the Chairman of the International Trade Commission;
(12) the President of the Export-Import Bank;
(13) the President of the Overseas Private Investment Corporation; and
(14) such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

(c) **Chairman.**—The Secretary of Commerce shall be Chairman of the Committee.

(d) **Designees.**—Any member of the Committee may appoint a designee to serve in place of such member on the Committee.

SEC. 5403. FUNCTIONS OF THE COMMITTEE.

The Committee shall advise the Secretary of Commerce as appropriate, on the establishment, structure, contents, and operation of a National Trade Data Bank in accordance with section 5406 in order to assure the timely collection of accurate data and to provide the private sector and governmental officials efficient access to economic and trade data collected by the Federal Government for purposes of policymaking and export promotion.

SEC. 5404. CONSULTATION WITH THE PRIVATE SECTOR AND GOVERNMENT OFFICIALS.

The Secretary shall regularly consult with representatives of the private sector and officials of State and local governments to assess the adequacy of United States trade information. The Secretary shall seek recommendations on how trade information can be made more accessible, understandable, and relevant. The Secretary shall seek recommendations as to what data should be included in the export promotion data system in the Data Bank.

SEC. 5405. COOPERATION AMONG EXECUTIVE AGENCIES.

Each executive agency shall furnish to the Secretary such information for inclusion in the National Trade Data Bank as the Secretary, in consultation with the Advisory Committee, considers necessary to the operation of the Data Bank.

SEC. 5406. ESTABLISHMENT OF THE DATA BANK.

(a) ESTABLISHMENT.—Within 2 years after the date of the enactment of this Act, the Secretary of Commerce shall establish the Data Bank. The Secretary shall manage the Data Bank. The Data Bank shall consist of two data systems, to be designated the International Economic Data System, as described in subsection (b) and the Export Promotion Data System, as described in subsection (c).

(b) INTERNATIONAL ECONOMIC DATA SYSTEM.— The International Economic Data System shall include current and historical information determined by the Secretary to be useful (after the consultation required by section 5404) to policymakers and analysts concerned with international economics and trade and which shall include data compiled or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and countries with which the United States has important economic relations including—

(1) data on imports and exports, including—

(A) aggregate import and export data for the United States and for each foreign country;

(B) industry-specific import and export data for each foreign country;

(C) product and service specific import and export data for the United States;

(D) market penetration information; and

(E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—

(A) interest rates; and

(B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—

(A) wage rates for major industries;

(B) international unemployment rates; and

(C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—

(A) trade barriers; and

(B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original port of entry for imports of goods and, to the extent possible services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this subtitle.

(c) EXPORT PROMOTION DATA SYSTEM.—The export promotion data system shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by section 5404) to be of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports, while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means of disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on—

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as—

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability, through public sources of funds for United States exports and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this subtitle.

SEC. 5407. OPERATION OF THE DATA BANK.

The Secretary shall manage the Data Bank to provide the most appropriate data retrieval system or systems possible. Such system or systems shall—

(1) be designed to utilize data processing and retrieval technology in monitoring, organizing, analyzing, and disseminating the data and information contained in the Data Bank;

(2) use the most effective and meaningful means of organizing and making such information available to—

(A) United States Government policymakers;

(B) United States business firms;

(C) United States workers;

(D) United States industry associations;

(E) United States agricultural interests;

(F) State and local economic development agencies; and

(G) other interested United States persons who could benefit from such information;

(3) be of such quality and timeliness and in such form as to assist coordinated trade strategies for the United States; and

(4) facilitate dissemination of information through nonprofit organizations with significant outreach programs which complement the regional outreach programs of the United States and Foreign Commercial Service.

SEC. 5408. INFORMATION ON THE SERVICE SECTOR.

(a) Service Sector Information.—The Secretary shall ensure that, to the extent possible, there is included in the Data Bank information on service sector economic activity that is as complete and timely as information on economic activity in the merchandise sector.

(b) Survey.—The Secretary shall undertake a new benchmark survey of service transactions, including transactions with respect to—

(1) banking services;

(2) information services, including computer software services;

(3) brokerage services;

(4) transportation services;

(5) travel services;

(6) engineering services;

(7) construction services; and

(8) health services.

(c) General Information and Index of Leading Indicators.—The Secretary shall provide—

(1) not less than once a year, comprehensive information on the service sector of the economy; and

(2) an index of leading indicators which includes the measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

SEC. 5409. EXCLUSION OF INFORMATION.

The Data Bank shall not include any information—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) that is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

SEC. 5410. NONDUPLICATION.

The Secretary shall ensure that information systems created or developed pursuant to this subtitle do not unnecessarily duplicate information systems available from other Federal agencies or from the private sector.

SEC. 5411. COLLECTION OF DATA.

Except as provided in section 5408, nothing in this subtitle shall be considered to grant independent authority to the Federal Government to collect any data or information from individuals or entities outside of the Federal Government.

SEC. 5412. FEES AND ACCESS.

The Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the Data Bank and may charge reasonable fees consistent with section 552 of title 5, United States Code.

SEC. 5413. REPORT TO CONGRESS.

(a) INTERIM REPORT.—Not more than 1 year after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives describing actions taken pursuant to this subtitle particularly—

(1) actions taken to provide the information on services described in section 5408; and

(2) actions taken to provide State-by-State information as described in section 5406(b)(7).

(b) FINAL REPORT.—Not more than 3 years after the date of enactment of this Act, the Secretary after consultation with the Advisory Committee shall submit a report to the Governmental Affairs Committee and the Banking, Housing, and Urban Affairs Committee of the Senate, other appropriate committees of the Senate, and the House of Representatives—

(1) assessing the current quality and comprehensiveness of, and the ability of the public and of private entities to obtain access to trade data;

(2) describing all other actions taken and planned to be taken pursuant to this subtitle;

(3) including comments by the private sector and by State agencies that promote exports on the implementation of the Data Bank;

(4) describing the extent to which the systems within the Data Bank are being used and any recommendations with regard to the operation of the system; and

(5) describing the extent to which United States citizens and firms have access to the data banks of foreign countries that is similar to the access provided to foreign citizens and firms.

D. PRIVATE OR PUBLIC SECTOR ADVISORY COMMITTEES

Section 135 of Trade Act of 1974, as amended

[19 U.S.C. 2155, P.L. 93-618, as amended by P.L. 96-39, P.L. 98-573, P.L. 99-514, and P.L. 100-418]

SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) In General.—

(1)[1] The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 1102 of the Omnibus Trade and Competitiveness Act of 1988;

(B) the operation of any trade agreement once entered into; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) Advisory Committee for Trade Policy and Negotiations.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 2 years. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) General Policy, Sectoral, or Functional Advisory Committees.—

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 1102 of the Omnibus Trade and Competitiveness Act of 1988 shall be provided under the preceding sentence not later than the date on which the President notifies the Congress under section 1103(a)(1)(A) of such Act of 1988 of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act apply—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

(2) to all other advisory committees which may be established under subsection (c); except that the meetings of advisory committees established under subsections (b) and (c) shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or his designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to matters referred to in subsection (a), and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c).

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) or are designated by the chairmen of either such committee under section 161(b)(3)(A) and staff members of either such committee designated by the chairmen under section 161(b)(3)(A); and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) or designated by the chairman of such committee under section 161(b)(3)(B) and staff members of such committee designated under section 161(b)(3)(B), but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negoti-

ations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) ADVISORY COMMITTEE SUPPORT.—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NON-ACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS.—It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) PRIVATE ORGANIZATIONS OR GROUPS.—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES.—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE.—The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) NON-FEDERAL GOVERNMENT DEFINED.—As used in this section the term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

Section 306(c)(2)(A) of Trade and Tariff Act of 1984

[19 U.S.C. 2114(c); P.L. 98–573]

SEC. 306. PROVISIONS RELATING TO INTERNATIONAL TRADE IN SERVICES.

[(c)(1) Addition to authority of U.S. Trade Representative and "Inter-agency Trade Organization" on trade in services.]

(2)(A) The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.

APPENDIX

STATUTORY CITATIONS OF MAJOR U.S. TRADE LAWS [1]

Agricultural Act of 1956

Public Law 84-540, ch. 327, approved May 28, 1956, 70 Stat. 188, codified as amended at various sections of titles 7 and 16.

Conference Report on H.R. 10875, Report No. 2197; H.R. 10875 reported from House Agriculture Committee, April 30, 1956, House Report 84-2077; H.R. 10875 reported from Senate Committee on Agriculture and Forestry, May 11, 1956, Senate Report 84-1966.

Agricultural Adjustment Act of 1933

Act of May 12, 1933, ch. 25, 48 Stat. 31, 7 U.S.C. 601 *et seq.*

H.R. 3835 reported from House Agriculture Committee, March 20, 1933, House Report 73-6; H.R. 3835 reported from Senate Committee on Agriculture and Forestry, April 5, 1933, Senate Report 73-16, and Senate Committee on Banking and Currency, April 21, 1933, Senate Report 73-40.

Caribbean Basin Economic Recovery Act

Public Law 98-67, title II, approved August 5, 1983, 97 Stat. 384, 19 U.S.C. 2701 *et seq.*

Title II of Conference Report on H.R. 2973, House Report 98-325; H.R. 2769 reported from House Committee on Ways and Means, June 24, 1983, House Report 98-226; H.R. 2769 reported from Senate Committee on Finance, October 29, 1983, Senate Report No. 98-285.

Comprehensive Anti-Apartheid Act of 1986

Public Law 99-440, approved October 2, 1986, 100 Stat. 1086, 22 U.S.C. 5001.

H.R. 4868 reported from House Committee on Foreign Affairs and House Committee on Ways and Means, House Report 99-638, pts. I and II; S. 2701 reported from Senate Committee on Foreign Relations, Senate Report 99-370.

Export Administration Act of 1979

Public Law 96-72, approved September 29, 1979, 93 Stat. 503, 50 App. U.S.C. 2401-2420.

Conference Report on S. 737, House Report 96-482; S. 737 passed House in lieu of H.R. 4034, September 25, 1979 (*see* House Report 96-200 on H.R. 4034); S. 737 reported from

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[1] Does not include subsequent amendments to these laws.

Senate Banking, Housing, and Urban Affairs Committee, May 15, 1979, Senate Report 96-169.

Export Trading Company Act of 1982

Public Law 97-290, approved October 8, 1982, 96 Stat. 1233, 15 U.S.C. 4001-4003, 12 U.S.C. 1841-1843, 15 U.S.C. 4011-4021.

Conference Report on S. 734, House Report 97-924; S. 734 passed House in lieu of H.R. 1799 and H.R. 6016, July 27, 1982 (*see* House Report 97-637 on H.R. 1799 and House Report 97-629 on H.R. 6016); S. 734 reported from Senate Banking, Housing, and Urban Affairs Committee, March 18, 1981, Senate Report 97-27.

Foreign Corrupt Practices Act of 1977

Public Law 95-213, title I, approved December 19, 1977, 91 Stat. 1494, 15 U.S.C. 78a-78ff.

Conference Report on S. 305, House Report 95-831; S. 305 passed House November 1, 1977 (no committee report); S. 305 reported from Senate Banking, Housing, and Urban Affairs Committee, May 2, 1977, Senate Report 95-114.

Generalized System of Preferences Renewal Act of 1984

Public Law 98-573, title V, approved October 30, 1984.

Title V of Conference Report on H.R. 3398, House Report 98-1156; H.R. 6023 reported from House Committee on Ways and Means, September 27, 1984, House Report 98-1090; S. 1718 reported from Senate Committee on Finance, May 24, 1984, Senate Report 98-485.

International Emergency Economic Powers Act

Public Law 95-223, title II, approved December 28, 1977, 91 Stat. 1626, 50 U.S.C. 1701-1706.

H.R. 7738 reported from House International Relations Committee, June 23, 1977, House Report 95-459; H.R. 7738 reported from Senate Banking, Housing, and Urban Affairs Committee, October 3, 1977, Senate Report 95-466.

International Trade and Investment Act

Public Law 98-573, title III, approved October 30, 1984.

Title III of Conference Report on H.R. 3398, House Report 98-1156; H.R. 2848 reported from House Energy and Commerce Committee, May 16, 1983, House Report 98-203, pt. I, and House Committee on Ways and Means, September 22, 1983, House Report 98-203, pt. II. H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98-308; S. 144 reported from Senate Committee on Finance, March 14, 1983, Senate Report 98-24.

Meat Import Act of 1979

Public Law 96-177, section 1, approved December 31, 1979, 93 Stat. 1291, 19 U.S.C. 1202.

H.R. 2727 reported from House Committee on Ways and Means, June 6, 1979, House Report 96-238; H.R. 2727 reported from Senate Committee on Finance, December 7, 1979, Senate Report 96-465.

Omnibus Trade and Competitiveness Act of 1988

Public Law 100-418, approved August 23, 1988, 102 Stat. 1107; codified as amended at various sections of title 19 and several other titles.

Conference Report on H.R. 3 (H.R. 4848), House Report 100-576; H.R. 3 reported from House Committees on Ways and Means, Energy and Commerce, Foreign Affairs, Banking, Finance and Urban Affairs, Education and Labor, and Agriculture, April 6, 1987; House Report 100-40, Parts 1-6; S. 490 reported from Senate Committee on Finance, June 12, 1987; Senate Report 100-71.

Reciprocal Trade Agreements Act of 1934

Public Law 73-316, ch. 474, approved June 12, 1934, 48 Stat. 943, 19 U.S.C. 1001, 1201, 1351-1354.

H.R. 8687 reported from House Committee on Ways and Means, March 17 1934, House Report 73-100; H.R. 8687 reported from Senate Committee on Finance, May 2, 1934, Senate Report 73-871.

Steel Import Stabilization Act

Public Law 98-573, title VIII, approved October 30, 1984.

Title VIII of Conference Report on H.R. 3398, House Report 98-1156; H.R. 6301 reported from House Committee on Ways and Means, September 27, 1984, House Report 98-1089; No comparable Senate bill.

Tariff Act of 1930

Public Law 71-361, approved June 17, 1930, ch. 497, 46 Stat. 590, as amended, codified as amended at various sections of titles 6, 19, and 22.

Conference Reports on H.R. 2667, House Reports 71-1326, Senate Doc. Nos. 161 and 162; H.R. 2667 reported from House Committee on Ways and Means, May 9, 1929, House Report 71-7; H.R. 2667 reported from Senate Committee on Finance, September 4, 1929, Senate Report 71-37.

Trade Act of 1974

Public Law 93-618, approved January 3, 1975, 88 Stat. 1978 codified as amended at various sections of titles 5, 19, 26 and 31.

Conference Report on H.R. 10710, House Report 93-1644; H.R. 10710 reported from House Committee on Ways and Means, October 10, 1973, House Report 93-571; H.R. 10710 reported from Senate Committee on Finance, November 26, 1974, Senate Report 93-1298.

Trade Agreements Act of 1979

Public Law 96-39, approved July 26, 1979, 93 Stat. 144; codified as amended at various sections of titles 5, 13, 19 and 28.

H.R. 4537 reported from House Committee on Ways and Means, July 3, 1979, House Report 96-317; H.R. 4537 reported from Senate Committee on Finance, July 17, 1979, Senate Report 96-249.

Trade and Tariff Act of 1984

Public Law 98-573, approved October 30, 1984.

Conference Report on H.R. 3398, House Report 98-1156; H.R. 3398 reported from House Committee on Ways and Means, June 24, 1983, House Report 98-267; H.R. 3398 reported from Senate Committee on Finance, November 10, 1983, Senate Report 98-308.

Trade Expansion Act of 1962

Public Law 87-794, approved October 11, 1962, 76 Stat. 872, codified as amended at various sections of title 19.

Conference Report on H.R. 11970, Report 2518; H.R. 11970 reported from House Committee on Ways and Means, June 12, 1962; House Report 98-1818; H.R. 11970 reported from Senate Committee on Finance, September 14, 1962, Senate Report 87-2059.

Trading With the Enemy Act

Public Law 65-91, approved October 6, 1917, ch. 106, sections 1-31, 40 Stat. 411, 50 App. U.S.C. 1-44.

Conference Report on H.R. 4960, House Report 65-155; H.R. 4960 reported from House Committee on Interstate and Foreign Commerce, House Report 65-85; H.R. 4960 reported from Senate Committee on Commerce, Senate Reports 65-111 and 65-113.

United States-Canada Free-Trade Implementation Act of 1988

Public Law 100-449, approved September 28, 1988, 102 Stat. 1851, 19 U.S.C. 2112 note.

H.R. 5090 reported from House Committees on Ways and Means, Interior and Insular Affairs, Foreign Affairs, Judiciary, Banking, Finance and Urban Affairs, Government Operations, Energy and Commerce, and Agriculture, August 3, 1988; House Report 100-816, Parts 1-8; H.R. 5090 reported from Senate Committees on Finance, Agriculture, Nutrition, and Forestry, Energy and Natural Resources, and Governmental Affairs, September 15, 1988; Senate Report 100-509.

DESCRIPTIONS OF MAJOR MULTILATERAL TRADE ORGANIZATIONS

General Agreement on Tariffs and Trade (GATT)

The GATT is a multilateral instrument, currently subscribed to by 96 countries, which has served as the framework for international trade since its inception in 1948. The GATT has evolved into a comprehensive set of rules governing many aspects of international trade. The organization provides a framework within which international trade negotiations are conducted and trade disputes among the world's major trading partners are resolved. The GATT headquarters are in Geneva, Switzerland.

GATT Membership as of August 1989—Contracting Parties

- Antiqua and Barbuda
- Argentina
- Australia
- Austria
- Bangladesh
- Barbados
- Belgium
- Belize
- Benin
- Botswana
- Brazil
- Burkina Faso
- Burma
- Burundi
- Cameroon
- Canada
- Central African Republic
- Chad
- Chile
- Colombia
- Congo
- Côte d'Ivoire
- Cuba
- Cyprus
- Czechoslovakia
- Denmark
- Dominican Republic
- Egypt
- Finland
- France
- Gabon
- Gambia
- Germany, Federal Republic of
- Ghana
- Greece
- Guyana
- Haiti
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Kenya
- Korea, Rep. of
- Kuwait
- Lesotho
- Luxembourg
- Madagascar
- Malawi
- Malaysia
- Maldives
- Malta
- Mauritania
- Mauritius
- Mexico
- Morocco
- Netherlands
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Norway
- Pakistan
- Peru
- Philippines
- Poland
- Portugal
- Romania
- Rwanda
- Senegal
- Sierra Leone
- Singapore
- South Africa
- Spain
- Sri Lanka
- Suriname
- Sweden
- Switzerland
- Tanzania
- Thailand
- Togo
- Trinidad and Tobago
- Turkey
- Uganda
- United Kingdom
- United States of America
- Uruguay
- Yugoslavia
- Zaire
- Zambia
- Zimbabwe

Organization for Economic Cooperation and Development (OECD)

Founded in 1961 and based in Paris, the OECD is the primary organization for industralized nations to discuss trade and economic matters. The objectives are to achieve economic growth and employment and a rising standard of living in member countries while maintaining financial stability. The 24 member countries use the OECD and its various committees and working groups to conduct both studies and negotiations on particular economic problems and to coordinate their policies for purposes of international negotiations.

OECD Membership

- Australia
- Austria
- Belgium
- Canada
- Denmark
- Finland
- France
- Germany, Federal Republic of
- Greece
- Iceland
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States

United Nations Conference on Trade and Development (UNCTAD)

Based in Geneva and associated with the United Nations system, UNCTAD focuses attention on international economic relations and measures that might be taken by developed countries to accelerate the pace of economic and industrial development in the developing countries. The conference has met quadrennially since 1964 in various locations throughout the world. UNCTAD committees meet several times each year between the major conferences and is supported by the permanent UNCTAD Secretariat in Geneva, Switzerland.

Customs Cooperation Council (CCC)

Established in 1952, the Customs Cooperation Council is a 93-member international organization with headquarters in Brussels, Belgium. It deals exclusively with customs matters. Its objective is to obtain, in the interest of international trade, the best possible degree of uniformity among the customs systems of member nations. The United States became a member on November 5, 1970.

The Customs Service is the lead government agency in dealing with the various activities of the Council, including the work of the Harmonized System Committee. The Customs Service heads the U.S. delegations to the sessions of the Committee. Generally, the Council studies questions relating to cooperation in customs matters, examines technical aspects of customs systems and furnishes information and advice to member states.

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